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POLITICAL ASYLUM PROCEDURES FOR ALIEN CREWMEN

HEARINGS

BEFORE THE

SUBCOMMITTEE ON IMMIGRATION AND REFUGEE POLICY

OF THE

COMMITTEE ON THE JUDICIARY UNITED STATES SENATE

NINETY-NINTH CONGRESS

FIRST SESSION

ON

POLITICAL ASYLUM PROCEDURES FOR ALIEN CREWMEN AND HOW THEY WERE APPLIED TO A SOVIET SEAMAN, MIROSLAV MEDVID

NOVEMBER 5 AND 7, 1985

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POLITICAL ASYLUM PROCEDURES FOR ALIEN CREWMEN

TUESDAY, NOVEMBER 5, 1985

U.S. SENATE,
SUBCOMMITTEE ON IMMIGRATION AND REFUGEE POLICY,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The subcommittee met, pursuant to notice, at 2:05 p.m., in room SD-226, Dirksen Senate Office Building, Hon. Alan K. Simpson (chairman of the subcommittee), presiding.

Present: Senators Simpson, Grassley, Denton and Simon.

Also Present: Richard W. Day, chief counsel and staff director; Jerry M. Tinker, minority counsel; Deborah Gibbs, staff assistant; Carl Hampe, counsel; Jerry M. Tinker, minority counsel of the Committee on the Judiciary.

OPENING STATEMENT OF HON. ALAN K. SIMPSON, A U.S. SENATOR FROM THE STATE OF WYOMING, CHAIRMAN, SUBCOMMITTEE ON IMMIGRATION AND REFUGEE POLICY

Senator SIMPSON. Good afternoon. We are here to discuss our Nation's political asylum procedures for alien crewmen in general and in particular how these procedures were applied to a Soviet seaman, Miroslav Medvid. Some of you have heard me say before I do not know what legislative gods have visited upon me the chairmanship of nuclear regulation, immigration and refugee policy, and formerly veterans' affairs, but it is a dazzling array of things that I get to dabble in here.

Let me state at the outset—and I think it is important—that I do not hold hearings for the sake of attracting the media. I know that sounds weird in this arena, but someone told me last week that if we would just have a hearing, he hoped it would be a seven-camera hearing, which is a dazzling thing that we all seek and lust for here.

That was one reason I did not have a hearing last week because I think too often we in Congress respond to the heat of an issue without generating too much light. Today I would hope we might shed some light on an issue that to this point has generated a significant amount of heat. We have all read the newspaper articles concerning the Soviet sailor "twice returned to his ship by the INS." We have seen the television stories showing ominous shots of a Soviet ship and read editorials calling the Russian ship a "floating dungeon" and other things.

Despite this less than restrained coverage, some light has emerged. The U.S. Distirct Court for the District of Columbia has found that an injunction barring the ship's departure was not warranted because the Government made a bonafide effort to ascertain whether Medvid sought asylum. In all circumstances the conclusion was that INS actions were neither arbitrary nor capricious.

I note this morning that that case was upheld on appeal. I am normally most reluctant to interfere with an issue which is under judicial consideration. However, the enormous interest shown by my colleagues on both sides of the aisle has prompted me to go forward with the hearing. Nonetheless I reiterate further that the district court decision was appealed to the Circuit Court of Appeals which affirmed the district court decision this morning.

One of the tough things in this area of immigration and refugee policy is that before 1980, being from a Communist country was sufficient to qualify a person as a refugee. That is not the case; under the 1980 refugee act, one must demonstrate persecution or a well founded fear of persecution based upon race, religion, nationality, origin, or membership in a particular social group or political opinion. That is what a refugee is.

The fact that one is from a Communist country is not sufficient in itself to qualify one as a refugee. Today we are here to determine if there are additional facts; we need to know them and try to lay to rest the inaccurate information. If this matter was indeed handled improperly, what actions must we take here in our country to ensure that it does not occur again? I think that is the issue. I am very pleased to have the subcommittee members joining me in this effort.

It is a very fine subcommittee, and they have been very thoughtful. No member of this subcommittee has requested anything inappropriate of me on the issue. They are all very thoughtful, bright, intelligent people on both sides of the aisle, and they have some serious concerns about what happened and what we can do to correct it. I think there were some deficiencies, and we will find that out. With that, I would ask any of my colleagues if they have any opening statements that they might wish to make. I will start here with Senator Grassley and then go to Senator Simon and then to Senator Denton.

OPENING STATEMENT OF HON. CHARLES E. GRASSLEY, A U.S. SENATOR FROM THE STATE OF IOWA

Senator GRASSLEY. Mr. Chairman, I thank you, first of all, for responding so positively, and more importantly, so quickly to our request for a hearing. I have no opening statement, however, I would like to mention that my purpose for asking that this hearing be held is to see if procedure was followed in an oversight capacity and, if the procedure was not followed, what we need to do to insure that it be followed in the future; and also whether or not any new legislation in this area is necessary.

[Statement follows:]

PREPARED STATEMENT OF HON. CHARLES E. GRASSLEY, A U.S. SENATOR FROM THE STATE OF IOWA

Mr. Chairman, now here's a guy who jumped into the Mississippi and swan some distance to shore. When he was finally interviewed by border patrol personnel, he avowed not once but twice that he was seeking asylum. The border patrol personnel on the scene then took it upon themselves not only to ignore Medvid, but official policy as well. Despite his pleas he was taken back to his ship whereupon he jumped into the river again. Nevertheless he was forcibly returned to the ship.

Then someone in the government woke up and attempted to pursue the matter. By that time the sailor had been held by the Soviets for a sufficient length of time to undergo "God knows what" at the hands of expert persecutors.

Then we tried to gain the truth in the presence of the persecutors and we did so for a very short time. Remembering that this man also assuredly was coerced into returning home, it seems to me that we should hang our heads in shame over the treatment Mr. Medvid has received to this point and we should do everything we can to rectify the situation as quickly as possible.

Senator SIMPSON. Thank you very much. Paul.

OPENING STATEMENT OF HON. PAUL SIMON, A U.S. SENATOR FROM THE STATE OF ILLINOIS

Senator SIMON. Thank you, Mr. Chairman. I want to join in thanking you for calling this hearing. I think the question is not the court decisions. The court can only decide whether the agencies were within the law in the decisions that they made. I think what we have to take a look at are really two questions. One is were the decisions right? And, second, is the law correct, and should the law be changed in this kind of a situation?

I called Mrs. Padoch last night. I see her here, and she will be testifying. She assured me beyond any question that she was certain beyond any doubt that he was seeking asylum. Our colleague from New Hampshire, Senator Humphrey, made a suggestion on the floor of the Senate the other day that I think makes a great deal of sense.

In a sense we are hostage to a summit meeting coming up right now, and the agencies do not want to do anything to cause any problems just before that summit meeting comes up. We are not faced just with one summit meeting. There are going to be a whole series of meetings, I hope, between the United States and the Soviet Union. I happen to be one that believes that we ought to be improving relations between our two countries.

But I also believe that we cannot back off on what we believe just because there is a summit meeting coming up. There are things that we do believe and believe strongly. Senator Humphrey said that when we have someone like this sailor who apparently wanted to defect, that that person be turned over to a neutral nation, to Switzerland, to Sweden, or to Finland, to some other country so that it is a decision that is not made by the United States that is an anti-Soviet decision.

Something along that line seems to me to make a great deal of sense, but I am eager to listen and learn, and I guess I am also interested to see if anything can be done yet in the situation for this one sailor because, as I understand it, that ship is still going to be in our waters for roughly another 24 hours; and then beyond that, whether there aren't some policy questions that we ought to be taking a look at.

Senator SIMPSON. Indeed. I agree. Senator Denton, please.

OPENING STATEMENT OF HON. JEREMIAH DENTON, A U.S. SENATOR FROM THE STATE OF ALABAMA

Senator DENTON. Mr. Chairman, these remarks are each from our personal perspectives. I do not have any apology for mine, and I will not summarize. I will read my statement. On October 25, 1985, Seaman Miroslav Medvid dove into the Mississippi River and swam ashore with his personal papers safely sealed in a glass jar.

When he did so, he touched off a series of events and a chain of decisions that call into serious question, in my view, the adequacy of our laws and regulations governing the treatment of persons who may or may not be seeking to flee Communist tyranny.

The events also call up a much weightier question as to the adequacy of American understanding of the very nature of the Soviet Union and nations allied with her, adequacy of understanding of what we are dealing with, and finally, adequacy of understanding of how to deal with it.

I regret numerous references to what I am going to refer, but I have to refer to it in this case; after living under Communist coercion for over 7½ years and still frequently dreaming of thwarted efforts to escape that coercion, it is personally tragic and frustrating to me to realize that Seaman Medvid's signals regarding his desire for freedom could have been misread.

I lived in an environment in which torture, starvation, and solitary confinement were used routinely to force strong men to make oral or written statements against their will. In almost all cases, the desperate man would try to communicate indirectly that the statements were coerced. There were hundreds of documented cases of that in the American POW experience in Vietnam.

There are millions of undocumented and a few documented cases of this type of experience, from Cardinal Mindzenty up through current events in Communist countries such as the Soviet Union or Nicaragua, or with individuals being so treated by Marxists in southern Africa and elsewhere. In my capacity as chairman of the Subcommittee on Security and Terrorism, I received extensive testimony and evidence about such treatment.

I, therefore, find it revolting to speculate that this free Nation may have shown itself to be so naive or even so calloused as to fail to consider adequately the possibility that such coercive measures were employed against a brave man who thought he had escaped and reached freedom. Indeed, there is naivete manifested in our national perspective on global communism, naivete rampant in the media, naivete evident in attitudes in voting on the floors of both bodies of Congress.

That naivete and its companion complacency can be fatal not only to individuals and to the freedom of individuals like Medvid, but fatal to the freedom of nations. Solzhenitsyn has cried out, perhaps in vain, against such folly.

I, therefore, commend your decision, Mr. Chairman, to hold a hearing promptly and I am pleased to be a participant and to join in welcoming today's witnesses from the administration.

I am glad that we will have the opportunity to question Dr. Irene Padoch about her critical and perhaps decisive role as an interpreter during that first crucial interview with Seaman Medvid.

Let me state that it is my belief that the initial decision to return Miroslav Medvid to the *Marshal Konev* could well have been a tragic error that may not now be possible to rectify. My review of the conflicting reports that have been available up to now suggest, at the very minimum, that there may be serious flaws in the INS procedures relating to this matter. I will not speculate on the very worst interpretation of the reports.

I have no evidence leading to the belief that summitry was a factor in the initial decision to send Seaman Medvid back to his ship and into Soviet custody. I do believe, however, that our failure consistently to make distinctions in our laws and our policies between Marxist-Leninist governments and other forms of government may have led to a faulty judgment regarding the young man's actions and his intentions. In my view, when our laws and our regulations governing the entry or attempted entry into the United States recognize no potential difference between a person who jumps a Soviet ship and one who jumps a British ship, we cannot hope to avoid a recurrence of the incident that forms the basis of our inquiry today.

As long as American Government officials, Members of Congress, academe, and the media choose not to debate vigorously, openly, and often the systematic nature of human rights violations by the Soviet Union and other Communist nations, it will be too easy to mistake a sailor seeking freedom for a stowaway or an errant crewman seeking a night on the town.

If we cannot clearly see the difference between the systematic coercion and repression of a Communist regime and the ad hoc, often decentralized and less pervasive, but no less evil, repression of an authoritarian regime, not of the Soviet type, we cannot hope to make a proper assessment of what to do when a Seaman Medvid comes along, nor can we take proper action in any sphere of Communist-Free World confrontation.

It is apparent that Medvid made an extraordinary effort to escape the Soviet grain freighter, not once but twice. He took with him sealed carefully in a glass jar his personal papers and most important possessions, and he knew precisely whom he wanted to see when he reached land: the police, the police of a free land.

I hope that during this hearing we will receive an explanation of why he was returned to the Soviet ship and other facts which are not now clear. Thank you, Mr. Chairman.

Senator GRASSLEY. Thank you, Senator Denton. Senator Humphrey is not here. We will immediately go to our next witness, the first one for the day, Alan C. Nelson. He is the Commissioner of the Immigration and Naturalization Service and appears before our committee.

It is my understanding, Commissioner, that you have with you, Robert Bombaugh, who is from the Office of Immigration Litigation in the Civil Division of the Justice Department. I would ask you to proceed according to the custom of this committee. Senator Simpson runs the committee with no time limit on your testimony. So proceed as you would desire.

STATEMENT OF ALAN C. NELSON, COMMISSIONER, IMMIGRATION AND NATURALIZATION SERVICE, U.S. DEPARTMENT OF JUSTICE, ACCOMPANIED BY ROBERT L. BOMBAUGH, OFFICE OF IMMIGRATION LEGISLATION, CIVIL DIVISION

Mr. NELSON. Thank you, Senator Grassley and Senator Denton and Senator Simon. I appreciate the opportunity to be with you today on this matter. As indicated, Mr. Bombaugh is present here with me. We have a prepared statement that has just been brought up. The committee has a copy of the prepared statement. I will read part and summarize part.

This testimony focuses on three areas: first, a summary of existing U.S. Government procedures for handling potential asylum cases, specifically relative to crewman from Soviet bloc countries; second, a review of the INS handling of this matter at the beginning stages; and, third, a recounting of the chronology of efforts to reinterview Mr. Medvid in a neutral setting, which occurred.

In summary—and I appreciate the concern of the committee in looking at existing legislation, and the administration, of course, is concerned similarly in looking at existing regulations and operating instructions regarding asylum matters. In reviewing these procedures, we believe the existing procedures for handling potential asylum cases for crewmen or anybody from Soviet bloc countries or others are fundamentally sound as written.

If these existing procedures, which do require supervisory review, contact with the INS headquarters and the Department of State, had been followed, we believe that Mr. Medvid would not have been summarily returned to the shipping agents and hence to the Soviet vessel without a thorough interview and determination of his intentions. As indicated, these existing operating instructions are attached to the testimony. So, as stated, there clearly were some mistakes made in the initial handling of the Soviet sailor, Miroslav Medvid. As we will testify here and the State Department will also testify in some detail, that after the facts of his premature return to his vessel became known, actions were immediately initiated by INS and the Departments of Justice and State, the National Security Council, the U.S. Coast Guard and U.S. Customs Services to assure that Mr. Medvid would have an opportunity to claim asylum after due deliberation in a neutral setting.

Through careful and vigrous action, the circumstances were achieved whereby Mr. Medvid was thoroughly interviewed and examined by U.S. officials in a neutral setting to ascertain his decision on remaining in the United States or returning to the Soviet Union.

I will not recount the incident; we have the testimony. As indicated, Ms. Padoch, the interpreter, who we contacted when Mr. Medvid came under control of the Border Patrol, had a lengthy interview and a telephone conversation. There was clearly some misunderstandings or misinterpretations. After that lengthy telephone conversation between the interpreter and the Border Patrol agents, the agents made a determination that the Soviet sailor was not seeking political asylum, but was only a disaffected crewman.

Senator GRASSLEY. Commissioner Nelson, I am going to have to call a short break. I am sure Senator Simpson is on his way back,

but if I do not leave right now, I will miss the vote. We will have a short, 5-minute recess.

[Brief recess.]

Senator SIMPSON. We will proceed. I believe, Commissioner Nelson, you were just beginning your remarks. If you will please proceed, sir.

Mr. NELSON. I might add, Mr. Chairman, at the beginning of the hearing you wondered what legislative gods had given you these assignments. I might phrase the same question with the executive gods; the Bagwan Sri Ragnesh and a bunch of Mariel Cuban criminals and efforts to escape all happening in the same week, you sometimes wonder.

Senator SIMPSON. It is a curse. Proceed, please.

Mr. NELSON. Thank you, Mr. Chairman. Just picking up where I left off, as indicated, after a lengthy telephone conversation between the interpreter, Ms. Padoch, and our Border Patrol agents in New Orleans, the agents made the determination that the Soviet sailor was not seeking asylum but was rather a disaffected crewman.

As indicated before—and we go into more detail in the testimony—the Immigration Service operations instructions call for special procedures in so-called immediate action cases. These immediate action, asylum type cases include specifically Soviet nationals. In such cases, service officers are to contact the local INS district director and to give the appropriate description.

The district director is to make an assessment of the case and then contact headquarters; specifically, the associate commissioner for examinations, who reports to the commissioner. And, in turn, the associate commissioner for examinations is responsible to contact the State Department operation officers.

Then there are followup procedures for interview, particular forms to be filled out, and contact with the Bureau of Human Rights and Humanitarian Affairs in the Department of State. Of course, they then deal, as you mentioned in your initial comments, with the criteria for asylum—the well founded fear of persecution on account of the various procedures set forth.

As indicated, these existing procedures in place were not followed in that the district director was not contacted; no supervisory review of the decision to return the crewman was sought, and neither the INS headquarters nor the Department of State was informed. If these procedures had been followed, we believe that Mr. Medvid would not have been summarily returned to the shipping agent and hence to the Soviet vessel without a thorough interview and determination of his intentions.

In our own assessment—and I might indicate that our own investigation is still continuing—we are preparing detailed investigative reports. But we believe that there were several warning signs that should have mandated exploration of this immediate action disposition that I alluded to.

First, Mr. Medvid's Soviet nationality was enough of a factor and should have raised questions about the normal assumption in this type of case, that he was a routine shipjumper. I might add, New Orleans is a heavy port with much traffic, and we have a lot of cases of shipjumpers. So it is not unusual that you have crewmen

coming ashore under varying circumstances. But, nevertheless, his nationality was a factor that should have raised some specific questions.

Then the second point, when Mr. Medvid claims he did not return to the Soviet Union for moral and political reasons, further investigation was clearly warranted to determine what was meant by that.

Third, if there were problems with either the quality of the interpretation of complications due to the telephonic connection—and there was some indication that the connection was poor—certainly the sailor should have remained in our custody until these problems were corrected. As mentioned, the specific guidelines I alluded to were in effect and should have been followed.

Now, the question that you raised and everybody raises, of course, is what can we learn from this. We have cabled a copy of the attached guidelines to all of our offices to clearly reiterate these guidelines and to be sure people are aware of them. I have set up a task force headed by former Associate Commissioner of Examinations, Andy Carmichael, to within 2 weeks, November 15, give us preliminary recommendations of any changes to these guidelines. As I say, they are fundamentally sound, but we ourselves are looking at whether procedures might be clarified in light of this incident, and also that would encompass any training procedures that ought to be addressed.

Now, let me shift now to what was done by the U.S. Government after Mr. Medvid had been returned to the Soviet vessel and after we learned in Washington of that return. And I might emphasize that it was the Government that learned that he had gone back to the vessel through contacts, and we undertook on our own motion all of the following steps that are described.

First of all, our southern regional commissioner, under which New Orleans serves, ordered Border Patrol agents to board the vessel *Marshal Konev* and to try to return Mr. Medvid to shore. This was unsuccessful. However, U.S. officials stayed on board the entire time during this incident. We also immediately contacted the Coast Guard preliminarily to ensure that the Soviet vessel not depart the harbor. Also, the State Department was immediately informed and the Deputy Attorney General.

The State Department immediately started their command operations. Very quickly they dispatched top personnel from their headquarters to New Orleans. At the same time we dispatched our assistant commissioner for the Border Patrol and his deputy to New Orleans to take charge of coordinated efforts.

During the weekend of October 26 and 27 with the National Security Council, with the Departments of Justice, State, Transportation, and Treasury, both on the ground in New Orleans and here in Washington, we developed a plan to secure the removal of Mr. Medvid to a neutral site to enable us to interview him and ascertain his considered decision on remaining in the United States or returning to the Soviet Union. After a lot of discussion, Mr. Woessner of the State Department can allude to if necessary, the Soviet authorities did agree to transfer Mr. Medvid from the Soviet vessel to a neutral location where we could interview him, and that was agreed to be the Coast Guard vessel *Salvia*.

He is now on board the Coast Guard vessel *Salvia*. Through an interpreter, Mr. Medvid at that time stated his decision to return to the U.S.S.R. and not to remain in the United States. However, to ensure Mr. Medvid had time to reflect on his decision in a calm setting and after consulting with the Department of State command center where I and others were present, a decision was made to take him ashore for a physical examination and a night's rest.

Mr. Medvid was then taken to the naval support facility in Algiers, LA, late on the evening of the 28th. He subsequently received a thorough medical examination; a psychiatric examination was also initiated that evening and was continued on the morning of the 29th, these conducted, of course, by a U.S. Navy doctor and an Air Force psychiatrist.

This was terminated after an hour due to Mr. Medvid's opinion and attitude. Following a night of rest at the naval facility where Mr. Medvid remained alone in a room by himself over night and slept, a second interview was conducted during the mid-morning on the 29th. Mr. Medvid emphatically repeated his decision to return to the Soviet Union, adding that he desired to see his family. In both interviews it was carefully explained to Mr. Medvid that if he feared returning to the Soviet Union he could remain in the United States without any punishment or imprisonment. As I indicated, Mr. Woessner of the State Department will testify in more detail on that whole process that I allude to.

On Tuesday, October 29 prior to the resumption of the interviews, a thorough review of the situation was held among U.S. officials on the scene in New Orleans and persons at the command post in Washington. It was determined that the Soviet sailor's mental and physical state was satisfactory and that the interview should be resumed. At the conclusion of the interview it was the consensus of the U.S. team that Mr. Medvid's request to return to the Soviet Union was rational, given after mature reflections, and not subject to the influence of drugs or other overt influence. At that time Mr. Medvid signed a statement denying any claim to asylum in the United States and requesting that he be allowed to return to the Soviet Union.

Following a final consultation with the Department of State and other high level U.S. officials, Medvid was turned over to the Soviet authorities and returned to his vessel.

In conclusion, it should be clear from my statement that there were errors in the performance of INS officers who initially processed Mr. Medvid and decided upon his return to the Soviet vessel. Mistakes in judgment were made. Existing procedures for handling potential asylum claimants were not followed.

However, as indicated, the procedures and our overall system for the adjudication of asylum claims are fundamentally sound, in our opinion. It is a good system. But, nevertheless, as stated, we are currently conducting a very thorough review of the procedures to determine whether any changes should be pursued. I have also indicated that we have given clear notice to all of our people to review those procedures that are currently in place.

As a final point, I am proud of how the U.S. Government responded to the situation; once we learned of the return of Mr. Medvid, I believe the Departments of Justice and State and others

did all that we could to provide the Soviet seaman with the understanding of his options, including the clear alternative to remain here as an asylee in the United States. Extensive interviews and mental and physical examinations were conducted over a 24-hour period in a setting under full U.S. control.

Following those interviews and examinations, it was the strong belief of all U.S. Government representatives that the expressly stated and signed written statement of Mr. Medvid, that he had decided to return to the Soviet Union, represented the true facts and proper resolution of this issue.

That completes my testimony on this matter. I would be pleased to respond to any questions.

[Statement follows:]

PREPARED STATEMENT OF ALAN C. NELSON

Chairman Simpson and Members of the Subcommittee,

I am pleased to be with you today to discuss the case of Soviet crewman, Miroslav Medvid and to review United States asylum procedures.

This testimony focuses on three areas. First, a summary of existing U. S. government procedures for handling potential asylum cases, specifically relative to crewmen from Soviet bloc countries. Second, a review of the INS handling of the matter. Third, a recounting of the chronology of the efforts to reinterview Mr. Medvid in a neutral setting.

We believe the existing procedure for handling potential asylum cases for crewmen from Soviet bloc countries are fundamentally sound as written and that no significant changes are mandated by the Medvid case. If these existing procedures, which require supervisory review, contact with INS headquarters and the Department of State, had been followed, we believe Mr. Medvid would not have been summarily returned to the shipping agents and hence to the soviet vessel without a thorough interview and determination of his intentions. The existing operating instructions are attached.

As indicated mistakes were made in the initial handling of the Soviet sailor, Miroslav Medvid, who deserted his vessel, the M/V Marshal Konev, in New Orleans, Louisiana, on October 24, 1985. When the fact of Mr. Medvid's premature return to the Soviet cargo ship became known, actions were promptly initiated by the Immigration and Naturalization Service and in conjunction with the Departments of Justice and State, the National Security Council, the U. S. Coast Guard, and the U. S. Customs Service to assure that Mr. Medvid would have an opportunity to claim asylum after due deliberation in a neutral setting. Through careful and vigorous action, the circumstances were achieved whereby Mr. Medvid was thoroughly interviewed and examined by United States officials in a neutral setting to ascertain his decision on remaining in the United States or returning to the Soviet Union.

The Incident

The Soviet crewman, Miroslav Medvid, arrived in the U. S. October 24, 1985, on board the soviet vessel M/V Marshal Konev at Belle Chasse, Louisiana. The crew was inspected by the Immigration Service, and with the exception of four officers, was denied entry and detained on board in the late afternoon. Mr. Medvid subsequently jumped over the side of the

vessel and swan to shore. Mr. Medvid was given a ride into New Orleans, Louisiana, by a local citizen and delivered to the New Orleans Police. Mr. Medvid was then taken to the New Orleans Harbor Police Headquarters. The U.S. Border Patrol had been contacted and took custody of Mr. Medvid and transported him to the Border Patrol Station in New Orleans in the early evening. It was ascertained by the Border Patrol agents that Mr. Medvid was from the Soviet Union and had deserted his vessel. An INS interpreter with capacity in Ukranian was contacted in New York City to assist in the interview of Mr. Medvid. The processing officer, after a lengthy telephonic conversation between the interpreter, Mr. Medivd and himself, made a determination that the Soviet sailor was not seeking political asylum, but was only a disaffected crewman. The officer then contacted the shipping agency for the vessel, who sent two employees to the Border Patrol station to return the Soviet sailor to his vessel. The shipping agency employees took charge of Mr. Medvid shortly before midnight on October 24.

Procedures for Handling Potential Asylum Claimants

In the early 1970's, an incident involving the return by U.S. officials of Simus Kidurkus, a Soviet seaman of Lithuanian ancestry, to his Soviet fishing boat triggered a review within the U.S. government of procedures regarding forcible repatriation. As a result, personnel in all federal agencies likely to encounter defecting seamen were advised of procedures to preclude forcible repatriation and the appropriate roles of the State Department and the Immigration and Naturalization Service in handling asylum claims from such persons. Initially outlined through field directives and operating instructions, procedures for handling asylum claims by INS officers were established by regulations published in December 1974. (First published in 8 CFR Part 108, these regulations were revised following the passage of the Refugee Act of 1980 as 8 CFR Part 208). The procedures established under the accompanying operations instructions have specific provisions for claims that may arise from crewmen from Communist bloc countries. Immigration inspectors are the officers who most often encounter crewmen who express an unwillingness to return to their home countries, but INS investigators and Border Patrol agents also have initial contacts with such persons.

Service operations instructions call for special procedures in so-called "immediate action" cases, which include among others cases involving Soviet nationals; diplomats; nationals of a Communist country who are present as part of an official visit, exchange program or state owned business or enterprise activity; or persons whose asylum request is politically sensitive or involves the possibility forced repatriation. In such cases Service officers are to contact the local INS and District

Directors and give descriptions of the individual case, the nature of the claim and why it is considered an immediate action case.

The District Director makes an assessment of the case and then contacts the Associate Commissioner for Examinations in the INS Central Office, if he or she concludes that the alien's claim should be handled on an immediate action basis. The Associate Commissioner for Examinations in turn is responsible to contact the State Department Operations Officer.

After further interviewing of the claimant and the completion of an asylum application which the applicant signs, information is provided by telephone and otherwise as expeditiously as possible to the Bureau of Human Rights and Humanitarian Affairs of the Department of State. That bureau provides an advisory opinion on the asylum request, which is considered by the District Director in making his or her final decision on the asylum claim. In these and all other claims, the fundamental basis for a grant of asylum is that the person has established that he or she has a well-founded fear of persecution on account of race, religion, nationality, membership on a particular social group, or political opinion, if he or she should be returned to his or her country of nationality or of last habitual residence.

Service personnel frequently encounter persons who are not fluent in English or any other language known to them. Consequently, they will seek assistance from INS interpreters, other Service personnel, or local persons with a capacity in the language of the alien. The effort is made to give an asylum applicant a full opportunity to articulate the bases on which he or she fears return to his or her homeland.

These existing procedures were not followed in that the District Director was not contacted, no supervisory review of the decision to return the crewman was sought and neither the INS Central Office nor the Department of State was informed. If that had been done, we believe Mr. Medvid would not have been summarily returned to the shipping agent and hence to the Soviet vessel without a thorough interview and determination of his intentions.

Routine procedures were followed until the interrogation phase of the case by the Border Patrol agents. As the interview was conducted through the interpreter, several warning signs should have mandated exploration of the "immediate action" disposition pursuant to the operating instructions for political asylum:

- Mr. Medvid's Soviet nationality was an unusual factor and should have raised questions about the assumption that he was a routine ship jumper.

- When Medvid claimed he did not want to return to the Soviet Union for "moral and political" reasons, further investigation was warranted to assure that he understood his options rather than concluding that he was not seeking political asylum and turning him over to the shipping agent.

- If there were problems with the quality of the interpretation or complications due to the telephonic connection over which the questions and answers had to be communicated, the Soviet sailor should have remained in INS custody until these problems were corrected.

- Finally, specific guidelines were available in the New Orleans Border Patrol Station setting forth procedures for handling Soviet nationals.

We believe that the existing procedures covering the handling of crewmen who indicate an unwillingness to return to their home country are fundamentally sound as written and that no significant changes are mandated by the Medvid case. If they had been followed, we are convinced that Medvid would not have been returned to his ship without further interviewing and review at a higher level by both INS and the Department of State.

In light of the Medvid incident, INS headquarters has cabled a copy of such operating instructions to all INS offices, both to emphasize the existing asylum procedures and to seek any suggested improvements.

The existing instructions are comprehensive; however, it is important to use this incident as an opportunity to thoroughly review the guidelines and consider changes in order to avoid any future similar incidents. An INS task force has been constituted for this purpose, with a preliminary report due by November 15, 1985. Training procedures will also be reviewed by this task force.

Actions Leading to the Reinterview of Mr. Medvid

I have dwelt at some length on the initial processing of Mr. Medvid, because questions have been raised about existing INS procedure and their appropriateness and sensitivity to applications from persons such as this Soviet crewman. Now I would like to detail what actions were taken, once the summary return of Mr. Medvid came to INS supervisory attention.

Mid-afternoon on Friday, October 25, I became aware of this situation following calls from the New Orleans District Office and the New

Orleans Border Patrol sector headquarters to the Associate Commissioner for Enforcement. At that point, the Southern Regional Commissioner, located in Dallas, Texas had already ordered Border Patrol agents to board the M/V Marshal Konev and try to return Mr. Medvid to the shore. This was unsuccessful. The Associate Commissioner for Enforcement instructed New Orleans to contact the U.S. Coast Guard and ask that they dispatch a vessel to the scene to insure that the Soviet ship not depart. This was done. I directed that the Department of State be informed and personally contacted the Deputy Attorney General. We ordered a debriefing of the Border Patrol agents involved and subsequently a report from the INS contract interpreter from New York City.

The Department of State dispatched personnel from the Office of Soviet Affairs and the Office of the Legal Advisor, who arrived in New Orleans Friday evening. The Assistant Commissioner for the Border Patrol and his Deputy went to New Orleans to join the Southern Regional Commissioner, to ascertain precisely what had happened, and seek further opportunity to interview the Soviet seaman away from his ship. Negotiations with the captain of the Soviet vessel and later Soviet officials in New Orleans were conducted by these State Department and INS officials.

Throughout the weekend of October 26-27, senior INS managers and myself worked with personnel on the scene and with the National Security Council, the Departments of Justice, State, Transportation and Treasury officials in Washington to plan to secure the removal of Mr. Medvid to a neutral site and to enable us to interview him and ascertain his considered decision on remaining in the United States or returning to the Soviet Union. On Monday, October 28, the Soviet authorities agreed to the transfer of Mr. Medvid from the Soviet vessel to a location where he could be questioned by U.S. officials in a neutral atmosphere.

That same afternoon, Miroslav Medvid was transferred to the U.S. Coast Guard vessel Salvia accompanied by the Soviet ship captain and a Soviet diplomatic representative. In the interview conducted by a State Department official with an INS representative present. Through an interpreter Mr. Medvid stated his decision to return to the U.S.S.R. and not to remain in the United States. However, to insure Mr. Medvid had time to reflect on his decision in a calm setting, and after consulting with DOS command center, a decision was made to take him ashore for a physical examination and a night's rest.

Mr. Medvid was taken to the Naval Support Activity at Algiers, Louisiana, late evening of the 28th and subsequently received a thorough medical examination. A psychiatric examination was also initiated that

evening, and was continued in the morning of the 29th. Following a night of rest at the Naval facility where Mr. Medvid was alone, a second interview was conducted during mid-morning on the 29th. Mr. Medvid emphatically repeated his decision to return to the Soviet Union, adding that he desired to see his family. In both interiews, it was carefully explained to Mr. Medvid that if he feared returning to the Soviet Union, he could remain in the United States without any punishment or imprisonment here.

On Tuesday, October 29, 1985, prior to the resumption of the interviewing, a thorough review of the situation was held among U.S. officials on the scene in New Orleans and persons at the command post at the Department of State. It was determined that the Soviet sailor's mental and physical state was satisfactory and that the interview should be resumed. At the conclusion of the interview, it was the consensus of the United States team that Mr. Medvid was competent to make a decision concerning whether to remain in the United States. Following a final consultation with the Department of State and other high level U.S. officials, Mr. Medvid signed a statement denying any claim to asylum in the U.S. and requesting that he be allowed to return to the Soviet Union. After that he was returned to the M/V Marshal Konev.

Conclusion

It should be clear from my statement that there were errors in the performance of the Service officers who initially processed Mr. Medvid and decided upon his return to the Soviet vessel. Mistakes in judgement were made; existing procedures for handling potential asylum claimants were not followed.

However, the procedures and our overall system for the adjudication of asylum claims are fundamentaly sound. It is a good system. Nevertheless, we are currently conducting a very thorough review of the procedures to determine whether we should amend existing operating instructions to ensure that any person suggesting an unwillingness to return to his country will be interviewed completely to elicit the basis for a well-founded fear of persecution. I can assure that all of our Service officers are on notice today of what is expected of them in this regard.

I am proud of how the United States Government responded to this situation, once we learned of the return of Mr. Medvid. I believe that the Departments of Justice and State and others did all that we could to provide that Soviet seaman with the understanding of his options, including the clear alternative to remain here as an asylee in the United States. Extensive interview and mental and physical examinations were

conducted over a 24 hour period in a setting under full U.S. control. Following those interviews and examinations, it was the strong belief of all U. S. government respresentatives that the expressly stated and signed written statement of Mr. Miroslav Medvid that he had decided to return to the Soviet Union represented the true facts and proper resolution of this issue.

That completes my testimony on this matter. I will be glad to answer questions that you may have.

ATTACHMENT

208.8 PROCESSING ASYLUM REQUEST. IMMEDIATE ACTION CASES

(A) DEFINITION

(I) A REQUEST (OR IMMINENT REQUEST) FOR ASYLUM WHICH IS POLITICALLY SENSITIVE OR INVOLVES THE POSSIBILITY OF FORCIBLE REPATRIATION.

(II) ANY NATIONAL OF THE SOVIET UNION;

(III) ANY NATIONAL OF EAST GERMANY, ROMANIA, POLAND, HUNGARY, CZECHOSLOVAKIA, BULGARIA, MONGOLIA, CUBA, ALBANIA, THE PEOPLE'S REPUBLIC OF CHINA, NORTH KOREA, VIETNAM, LAOS, OR CAMBODIA, WHO IS PRESENT IN THE UNITED STATES AS PART OF AN OFFICIAL VISIT, FORMAL CULTURAL OR ATHLETIC EXCHANGE, EXCHANGE STUDENT PROGRAM OR STATE OWNED BUSINESS OR ENTERPRISE ACTIVITY, OR WHO IS IN TRANSIT THROUGH THE UNITED STATES IN SUCH CAPACITY;

(IV) ANY FOREIGN DIPLOMAT, FOREIGN CONSULAR OFFICER, OR FOREIGN OFFICIAL, REGARDLESS OF THE COUNTRY.

(V) ANY OTHER ALIEN WHO ASSERTS THERE IS A SERIOUS THREAT OF FORCIBLE REPATRIATION TO HIMSELF OR TO HIS FAMILY.

(VI) ANY REQUEST FOR ASYLUM WHICH FOR OTHER REASONS PRESENTS SPECIAL PROBLEMS CALLING FOR PROMPT ATTENTION.

(B) NOTIFICATION. WHEN IT COMES TO THE ATTENTION OF ANY SERVICE EMPLOYEE THAT A PERSON DESCRIBED IN PARAGRAPH (A) ABOVE MAY BE SEEKING ASYLUM, THE DISTRICT DIRECTOR WILL BE NOTIFIED IMMEDIATELY AND FURNISHED ALL THE PERTINENT FACTS OF THE CASE, INCLUDING THE ALIEN'S IDENTITY, NATIONALITY, NEWSWORTHINESS OR PROMINENCE, AND REASON(S) GIVEN FOR REQUESTING ASYLUM. IF THE DISTRICT DIRECTOR AGREES THAT THE ASYLUM APPLICANT FALLS INTO THE IMMEDIATE ACTION CATEGORY, HE WILL EXPEDITIOUSLY RELATE THE FACTS OF THE CASE TO THE ASSOCIATE COMMISSIONER, EXAMINATIONS, CENTRAL OFFICE, OR THE CENTRAL OFFICE DUTY OFFICER, AND THE APPROPRIATE REGIONAL OFFICIAL. THE ASSOCIATE COMMISSIONER, EXAMINATIONS, OR THE CENTRAL OFFICE DUTY OFFICER WILL ALERT THE SERVICE'S PUBLIC INFORMATION OFFICER AND DEPARTMENT OF STATE'S OPERATIONS OFFICER, TELEPHONE 202-632-1512 OF THE REQUEST FOR ASYLUM.

(C) INTERVIEW OF ASYLUM APPLICANT. AFTER NOTIFYING THE ASSOCIATE COMMISSIONER, EXAMINATIONS, THE DISTRICT DIRECTOR WILL IMMEDIATELY ASSIGN AN OFFICER TO INTERVIEW THE ASYLUM APPLICANT UNDER OATH USING FORM I-589. THE APPLICANT WILL BE GIVEN AN OPPORTUNITY TO MAKE ANY STATEMENT OR PRESENT ANY EVIDENCE HE/SHE FEELS TENDS TO SUBSTANTIATE THE CLAIM OR FEAR OF PERSECUTION UPON RETURN TO HIS/HER COUNTRY OF NATIONALITY OR LAST HABITUAL RESIDENCE. THE ANSWERS GIVEN AND ANY EVIDENCE PRESENTED BY THE APPLICANT WILL BE MADE PART OF THE APPLICATION, AFTER WHICH THE APPLICANT WILL BE INSTRUCTED TO REVIEW THE FORM AND SIGN IT.

(D) SHELTER AND SUSTENANCE OF ASYLUM APPLICANT. IF IT APPEARS NECESSARY, OR THE ASYLUM APPLICANT REQUESTS IT, HE SHE WILL BE REFERRED TO THE APPROPRIATE VOLUNTARY AGENCY FOR SHELTER, SUSTENANCE, OR OTHER SIMILAR NEEDS.

(E) REQUEST FOR BHRHA ADVISORY OPINION. UPON COMPLETION OF THE INTERVIEW AND EXECUTION OF THE I-589, THE DISTRICT DIRECTOR WILL TELEPHONE ALL FACTS OF THE CASE TO THE BHRHA (202-632-2551 OR 632-2570) AND REQUEST AN ADVISORY OPINION.

Senator SIMPSON. Thank you very much, Commissioner. My colleagues will be returning here in a few minutes. We will have a series of rollcall votes I think throughout the afternoon. Therefore, perhaps we could hear the testimony of Senator Humphrey. I know that he would like to speak as a witness.

Senator SIMON. The Commissioner will not be leaving.

Senator SIMPSON. No; indeed not.

Senator SIMON. All right.

Senator SIMPSON. He will be here. I think Senator Humphrey would like to use the table there. Commissioner and Mr. Bombaugh, if you could just remain there and we will come back to questions for you, indeed.

Now let me introduce our fine colleague, Gordon Humphrey, who has taken a very sincere and intense interest in this issue. Knowing him as I do, I know it is authentic, and we would like to hear from you.

STATEMENT OF HON. GORDON J. HUMPHREY, A U.S. SENATOR, FROM THE STATE OF NEW HAMPSHIRE

Senator HUMPHREY. Thank you, Mr. Chairman. First of all, a profound thanks for an early and timely hearing on this subject.

Mr. Chairman, I am not entirely clear about the ground rules under which we are operating. In a luncheon just prior to this hearing you expressed some sentiment about approaching this in a generic fashion, if I correctly interpreted you. Am I free to proceed as I wish, or are there some constraints here?

Senator SIMPSON. You are under no constraints whatsoever. If I were appearing before your subcommittee, I would not want to face any either. Anything you wish, discuss. I do say that there may come a time in the day's activity when there will be some sensitive, perhaps, issue. If that does come, then I will ask my colleagues to see whether we should go into executive session. That is a procedure where we confer, come back out, and with an open vote show what we decided to do.

I do not know whether that will come. But as you are aware with our access to intelligence of the United States which is unknown to our fellow citizens, I know that you will be sensitive on that.

Senator HUMPHREY. Of course. In any event, Mr. Chairman, I know you have a great deal of ground to cover, so I will keep it brief.

May I just summarize the events in this way: We all know that Mr. Medvid twice jumped into the Mississippi River, once, the second time, in the black of the night, both times in the midst of at least a tropical storm if not a hurricane. I think we can reasonably conclude, as our Government should reasonably conclude, that Mr. Medvid was not out for some exercise, nor was he rendering a lusty rendition of "The Internationale" when he was observed to be kicking and screaming while being forcibly taken back aboard the vessel. I think any reasonable person can reach those conclusions. Now, the administration seems to take the position that the statement which Mr. Medvid subsequently signed should be dispositive. That is, we should discount anything that might have happened between Mr. Medvid's obvious attempt to seek asylum, on the one

hand, and his signing of that statement, on the other, between which we can all reasonably surmise that Mr. Medvid was brought under some form of intimidation, if not extortion, probably in respect to his family.

And, therefore, it seems to me given the likelihood of that extortion and given the gross discrepency between his behavior, on the one hand, and his ultimate signing of that statement on the other, that that written statement ought not to be dispositive.

I urge the subcommittee and the members not to approach this matter in the sense of a post mortem. Certainly we want to prevent future occurrences, but I maintain, Mr. Chairman, that this sailor ought still to be given yet another opportunity, that he deserves another opportunity, especially inasmuch as the Commissioner has just acknowledged that proceedings for asylum claimants were not followed; I believe that is a quote of the language he used. Obviously, due process was denied in this case. We are pretty sure that some extortion was involved. And, therefore, I have urged along with some 40 Senators now the administration to reopen this case and to have another look.

Let me just say finally, Mr. Chairman, that there has been some new evidence as of recent days; the original and first interpreter, Ms. Irene Padoch, has signed a sworn statement indicating that Mr. Medvid twice asked for asylum. Now, the INS, if I am not mistaken, tells us that he did not in that initial interview seek asylum nor was he provided the usual procedural safeguards for someone who is seeking asylum.

But the interpreter of that first encounter has signed a sworn statement saying that he did in fact ask for asylum not once but twice and furthermore expressed concern about his safety were he to be returned to Soviet authorities. Let me just say this finally, Mr. Chairman; if after this hearing it is the opinion of the subcommittee that something further should be done, that there is ample authority for the administration to act further.

I want to cite that authority. It is Department of State regulation which is pursuant to statute. Very briefly, it reads as follows—and I have made copies of this available to members of the committee and to the press. It is on the table for anyone who might not have gotten. You can consult page 211 of the Department of State document, which we have reproduced. It says in section 46.2, "No alien shall depart or attempt to depart from the United States if his departure would be prejudicial to the interest of the United States under provisions of 46.3."

Now, you may want to read all of that, but I am going to skip over now to section 46.3 which says, "The departure of the United States of any alien"—this defines aliens whose departure is deemed prejudicial to the interests of the United States as follows: "The departure from the United States of any alien within one or more of the following categories shall be deemed prejudicial to the interests of the United States."

Turning to page 12, paragraph (h) it says as one of those categories, "Any alien who is needed in the United States in connection with any investigation or proceeding being or soon to be conducted by any official, executive, legislative, or judicial agency in the United States or by any Government committee," and so on.

In other words, if this committee, subcommittee, or any other committee of the Congress chooses to have a legislative proceeding at which Mr. Medvid's presence is important, he would then fall under this category.

Now going on to category (j) as another category, "Any alien where doubt exists, whether such alien is departing or seeking to depart the United States voluntarily." Well, there is plenty of doubt here in the minds of reasonable people all across this country, Mr. Chairman, that Mr. Medvid is proceeding voluntarily to leave this country. I urge the subcommittee if in its wisdom after examining all of the facts, that it agrees doubt exists, that we proceed to reopen this case, that we plead with the administration to reopen this case; if that is not successful, that a further hearing be held at which Mr. Medvid's presence is deemed to be necessary. If I have read this correctly—and I am not an immigration lawyer, obviously—but it looks to me like we have a way to prevent this travesty and this tragedy from ultimately being carried out.

I thank the committee and the chairman for this opportunity to speak.

Senator SIMPSON. Thank you very much, Senator Humphrey. I have no inquiry to make. Does any member of the panel wish to—please, Senator Simon.

Senator SIMON. Just one question. I mentioned earlier before you got here, in my opening statement, your suggestion that you made on the Senate floor the other day, that a neutral nation be brought in so that this does not become a Soviet, U.S.S.R, confrontation.

Do you still believe something along that line makes sense?

Senator HUMPHREY. Senator Simon, obviously the man sought asylum here—at least, that is my conviction. But I am at the same time cognizant of the concern which the administration may have not to appear to be belligerent or troublesome at this juncture, although we have seen in the last day that the Soviets have no compunction on that point.

Nevertheless, I am aware of that sensitivity, and for my part, it seems unfair to speak for Mr. Medvid, but I think it would be a reasonable solution to the particular circumstances if Mr. Medvid were to be removed under the statutory authority we used in the first place, and which authority has not been prejudiced by its use once, and thence turned over to a neutral nation, a trustworthy neutral nation such as Switzerland, for instance.

Senator SIMON. I just would add again, Mr. Chairman, it just seems to me that that suggestion makes an awful lot of sense, and it removes this from a case where all of a sudden we are dealing with a man's life, and not dealing with it as we ordinarily would because we happen to have a summit meeting coming up.

I think the reality is that there ought to be a diplomatic way of solving this thing without saying to this young man, "You go back to the Soviet Union."

Senator HUMPHREY. I quite agree with Senator Simon on that point.

Senator SIMON. Mr. Chairman.

Senator SIMPSON. All right. Senator Denton.

Senator DENTON. I have no questions. I just want to thank Senator Humphrey for having alerted me to this situation and being re-

sponsible for my presence here today. I certainly admire the spirit with which you address this situation, Senator Humphrey.

Senator SIMPSON. Senator, I do appreciate very much your testimony, and this entire subcommittee, each and every one of us, both sides of the aisle, are aware that you have assisted in bringing this to the floor, and I speak on behalf of all of us. I appreciate it very much. Hopefully, we can reach an appropriate result, and I know that the court system and court activities will continue, and I know there is a great deal of activity in the United States toward other methods of bringing the matter to further attention. Thank you very much.

Senator HUMPHREY. Thank you, Mr. Chairman. May I just ask that the affidavit of Mrs. Padoch and the State Department regulations which I cited, and my official statement be made part of the record?

Senator SIMPSON. Without objection, so ordered.

[Information follows:]

STATEMENT BY SENATOR GORDON J. HUMPHREY
HEARING ON UKRAINIAN SEAMAN MUROSLAV MEDVID
NOVEMBER 5, 1985

THIS MAY BE ONE OF THE MOST IMPORTANT HEARINGS THIS BODY WILL EVER CONDUCT. A YOUNG MAN'S LIFE IS AT STAKE, A MAN WHO JUMPED SHIP NOT ONCE, BUT TWICE IN AN ACT OF DESPERATION. THERE IS GREAT CONCERN IN CONGRESS AND AMONG THE AMERICAN PEOPLE THAT A GREAT INJUSTICE MAY HAVE BEEN COMMITTED WHEN UKRAINIAN SEAMAN MIROSLAV MEDVID WAS RETURNED BY THE U.S. BORDER PATROL TO THE SOVIET SHIP MARSHAL KONEV.

FROM THE BEGINNING, MR. MEDVID'S INTENTIONS WERE IN DOUBT. THERE IS SUBSTANTIAL EVIDENCE CORRODRATING THE CONTENTION THAT MR. MEDVID ORIGINALLY SOUGHT ASYLUM IN THE UNITED STATES. DOCTOR IRENE PADOCH, WHO ACTED AS AN INTERPRETER IN THE CASE, HAS SIGNED AN AFFIDAVIT STATING THAT WHEN MR. MEDVID WAS ASKED WHETHER HE WANTED POLITICAL ASYLUM, HE UNHESITATINGLY RESPONDED "YES." FOR SOME REASON, HIS INTENTIONS WERE NOT PROPERLY CONVEYED TO U.S. IMMIGRATION OFFICIALS. ONCE THERE IS SOME INDICATION THAT AN ALIEN IS INTERESTED IN POLITICAL ASYLUM, HE MUST BE PROVIDED WITH FORM I-589, PURSUANT TO THE PROVISIONS OF 8 CFR SECTION 208.2, WHICH ARE THE GOVERNING REGULATIONS OF THE IMMIGRATION AND NATURALIZATION SERVICE. IMMIGRATION OFFICIALS IMMEDIATE TASK IS TO ASSIST HIM IN COMPLETING THIS FORM. THIS CLEARLY WAS NOT DONE.

ANY ALIEN IN THE UNITED STATES HAS LIMITED, BUT IMPORTANT, DUE PROCESS RIGHTS. HE HAS THE RIGHT TO BE NOTIFIED OF HIS RIGHT TO CLAIM ASYLUM UNDER 8 USC 1158. HE HAS THE RIGHT TO A HEARING IF HE REQUESTS ASYLUM AND HIS REQUEST FOR ASYLUM IS DENIED. AND HE HAS A RIGHT TO A MEDICAL EXAM UNDER ASYLUM PROCEDURES.

WAS MR. MEDVID GIVEN THE OPPORTUNITY TO EXERCISE THESE RIGHTS? THE ANSWER TO THAT QUESTION SEEMS LESS THAN CLEAR. DOCTOR PADOCH HAS SWORN THAT MR. MEDVID ASKED FOR ASYLUM, YET TODAY THE SEAMAN IS BACK ON HIS SHIP. THE YOUNG MAN WAS INDEED GIVEN A MEDICAL EXAMINATION, BUT IN THE ABSENCE OF ANY BLOOD OR URINE TEST, IT COULD NOT BE DETERMINED IF THE MAN HAD BEEN DRUGGED WHILE ON BOARD HIS SHIP.

THE STATE DEPARTMENT CONSIDERS THIS MATTER CLOSED. HOWEVER, I AM NOT AT ALL SATISFIED THAT ALL THE QUESTIONS SURROUNDING THIS CASE HAVE BEEN ANSWERED IN A MANNER THAT LEADS TO THE CONCLUSION THAT MR. MEDVID DID NOT WANT TO DEFECT TO THE UNITED STATES.

WHAT WERE MR. MEDVID'S REAL INTENTIONS WHEN HE JUMPED INTO THE MISSISSIPPI AND SOUGHT ASSISTANCE ASHORE? THE ONLY WAY WE CAN ANSWER THAT QUESTION IS TO TALK TO THE MAN IN AN TOTALLY NON-COERCIVE ENVIRONMENT. WHAT WE SEEK IS IMMEDIATE ACTION IN THIS RECARD IN ORDER TO PREVENT AN UNCONSCIONABLE MISCARRIAGE OF JUSTICE.

FURNISHING VISA RECORDS FOR COURT PROCEEDINGS

§ 42.150 Furnishing visa records for court proceedings.

Upon receipt by a consular officer of a request for information from a visa file or record for use in court proceedings, as contemplated in section 222(f) of the Act, the consular officer shall, prior to the release of the information, submit the request together with a full report to the Department.

[Dept. Reg. 108.429, 25 FR 3257, Apr. 15, 1960]

PART 46—CONTROL OF ALIENS DEPARTING FROM THE UNITED STATES

Sec.

46.1 Definitions.
46.2 Authority of departure-control officer to prevent alien's departure from the United States.
46.3 Aliens whose departure is deemed prejudicial to the interests of the United States.
46.4 Procedure in case of alien prevented from departing from the United States.
46.5 Hearing procedure before special inquiry officer.
46.6 Departure from the Canal Zone, the Trust Territory of the Pacific Islands, or outlying possessions of the United States.
46.7 Instructions from the Administrator required in certain cases.

AUTHORITY: Secs. 104, 215, 66 Stat. 174, 190; 8 U.S.C. 1104, 1185, unless otherwise noted.

§ 46.1 Definitions.

For the purposes of this part:

(a) The term "alien" means any person who is not a citizen or national of the United States.

(b) The term "Commissioner" means the Commissioner of Immigration and Naturalization.

(c) The term "regional commissioner" means an officer of the Immigration and Naturalization Service duly appointed or designated as a regional commissioner, or an officer who has been designated to act as a regional commissioner.

(d) The term "district director" means an officer of the Immigration and Naturalization Service duly appointed or designated as a district director, or an officer who has been designated to act as a district director.

(e) The term "United States" means the several States, the District of Columbia, the Canal Zone, Puerto Rico, the Virgin Islands, Guam, American Samoa, Swains Island, the Trust Territory of the Pacific Islands, and all other territory and waters, continental and insular, subject to the jurisdiction of the United States.

(f) The term "continental United States" means the District of Columbia and the several States, except Alaska and Hawaii.

(g) The term "geographical part of the United States" means (1) the continental United States, (2) Alaska, (3) Hawaii, (4) Puerto Rico, (5) the Virgin Islands, (6) Guam, (7) the Canal Zone, (8) American Samoa, (9) Swains Island, or (10) the Trust Territory of the Pacific Islands.

(h) The term "depart from the United States" means depart by land, water, or air (1) from the United States for any foreign place, or (2) from one geographical part of the United States for a separate geographical part of the United States: *Provided*, That a trip or journey upon a public ferry, passenger vessel sailing constwise on a fixed schedule, excursion vessel, or aircraft, having both termini in the continental United States or in any one of the other geographical parts of the United States and not touching any territory or waters under the jurisdiction or control of a foreign power, shall not be deemed a departure from the United States.

(i) The term "departure-control officer" means any immigration officer as defined in the regulations of the Immigration and Naturalization Service who is designated to supervise the departure of aliens, or any officer or employee of the United States designated by the Governor of the Canal Zone, the High Commissioner of the Trust Territory of the Pacific Islands, or the governor of an outlying possession of the United States, to supervise the departure of aliens.

(j) The term "port of departure" means a port in the continental United States, Alaska, Guam, Hawaii,

Puerto Rico or the Virgin Islands, designated as a port of entry by the Attorney General or by the Commissioner, or in exceptional circumstances such other place as the departure-control officer may, in his discretion, designate in an individual case, or a port in American Samoa, Swains Island, the Canal Zone, or the Trust Territory of the Pacific Islands, designated as a port of entry by the chief executive officer thereof.

(k) The term "special inquiry officer" shall have the meaning ascribed thereto in section 101(b)(4) of the Immigration and Nationality Act.

[22 FR 10827, Dec. 27, 1957, as amended by Dept. Reg. 108.441, 25 FR 7022, July 23, 1960]

§ 46.2 Authority of departure-control officer to prevent alien's departure from the United States.

(a) No alien shall depart, or attempt to depart, from the United States if his departure would be prejudicial to the interests of the United States under the provisions of § 46.3. Any departure-control officer who knows or has reason to believe that the case of an alien in the United States comes within the provisions of § 46.3 shall temporarily prevent the departure of such alien from the United States and shall serve him with a written temporary order directing him not to depart, or attempt to depart, from the United States until notified of the revocation of the order.

(b) The written order temporarily preventing an alien, other than an enemy alien, from departing from the United States shall become final 15 days after the date of service thereof upon the alien, unless prior thereto the alien requests a hearing as hereinafter provided. At such time as the alien is served with an order temporarily preventing his departure from the United States, he shall be notified in writing concerning the provisions of this paragraph, and shall be advised of his right to request a hearing if entitled thereto under § 46.4. In the case of an enemy alien, the written order preventing departure shall become final on the date of its service upon the alien.

(c) Any alien who seeks to depart from the United States may be required, in the discretion of the departure-control officer, to be examined under oath and to submit for official inspection all documents, articles, and other property in his possession which are being removed from the United States upon, or in connection with, the alien's departure. The departure-control officer may permit such other persons, including officials of the Department of State and interpreters, to participate in such examination or inspection and may exclude from presence at such examination or inspection any person whose presence would not further the objectives of such examination or inspection. The departure-control officer shall temporarily prevent the departure of any alien who refuses to submit to such examination or inspection, and may, if necessary to cause the alien to submit to such examination or inspection, take possession of the alien's passport or other travel document or issue a subpoena requiring the alien to submit to such examination or inspection.

[22 FR 10827, Dec. 27, 1957, as amended by Dept. Reg. 108.796, 45 FR 64174, Sept. 29, 1980]

§ 46.3 Aliens whose departure is deemed prejudicial to the interests of the United States.

The departure from the United States of any alien within one or more of the following categories shall be deemed prejudicial to the interest of the United States:

(a) Any alien who is in possession of, and who is believed likely to disclose to unauthorized persons, information concerning the plans, preparations, equipment, or establishments for the national defense and security of the United States.

(b) Any alien who seeks to depart from the United States to engage in, or who is likely to engage in, activities of any kind designed to obstruct, impede, retard, delay or counteract the effectiveness of the national defense of the United States or the measures adopted by the United States or the United Nations for the defense of any other country.

(c) Any alien who seeks to depart from the United States to engage in, or who is likely to engage in, activities which would obstruct, impede, retard, delay, or counteract the effectiveness of any plans made or action taken by any country cooperating with the United States in measures adopted to promote the peace, defense, or safety of the United States or such other country.

(d) Any alien who seeks to depart from the United States for the purpose of organizing, directing, or participating in any rebellion, insurrection or violent uprising in or against the United States or a country allied with the United States, or of waging war against the United States or its allies, or of destroying, or depriving the United States of sources of supplies or materials vital to the national defense of the United States, or to the effectiveness of the measures adopted by the United States for its defense, or for the defense of any other country allied with the United States.

(e) Any alien who is subject to registration for training and service in the Armed Forces of the United States and who fails to present a Registration Certificate (SSS Form No. 2) showing that he has complied with his obligation to register under the Universal Military Training and Service Act, as amended.

(f) Any alien who is a fugitive from justice on account of an offense punishable in the United States.

(g) Any alien who is needed in the United States as a witness in, or as a party to, any criminal case under investigation or pending in a court in the United States: *Provided*, That any alien who is a witness in, or a party to, any criminal case pending in any criminal court proceeding may be permitted to depart from the United States with the consent of the appropriate prosecuting authority, unless such alien is otherwise prohibited from departing under the provisions of this part.

(h) Any alien who is needed in the United States in connection with any investigation or proceeding being, or soon to be, conducted by any official executive, legislative, or judicial agency in the United States or by any governmental committee, board, bureau, commission, or body in the United States, whether national, state, or local.

(i) Any alien whose technical or scientific training and knowledge might be utilized by an enemy or a potential enemy of the United States to undermine and defeat the military and defensive operations of the United States or of any nation cooperating with the United States in the interests of collective security.

(j) Any alien, where doubt exists whether such alien is departing or seeking to depart from the United States voluntarily except an alien who is departing or seeking to depart subject to an order issued in extradition, exclusion, or deportation proceedings.

(k) Any alien whose case does not fall within any of the categories described in paragraphs (a) to (j), inclusive, of this section, but which involves circumstances of a similar character rendering the alien's departure prejudicial to the interests of the United States.

(Sec. 215, Immigration and Nationality Act, 66 Stat. 190, 8 U.S.C. 1185; Proc. No. 3004 of January 17, 1953)

[22 FR 10828, Dec. 27, 1957, as amended by Dept. Reg. 108.737, 42 FR 19479, Apr. 14, 1977; Dept. Reg. 108.796, 45 FR 84174, Sept. 29, 1980]

§ 46.4 Procedure in case of alien prevented from departing from the United States.

(a) Any alien, other than an enemy alien, whose departure has been temporarily prevented under the provisions of § 46.2 may, within 15 days of the service upon him of the written order temporarily preventing his departure, request a hearing before a special inquiry officer. The alien's request for a hearing shall be made in writing and shall be addressed to the district director having administrative jurisdiction over the alien's place of residence. If the alien's request for a hearing is timely made, the district director shall schedule a hearing before a special inquiry officer, and notice of such hearing shall be given to the alien. The notice of hearing shall, as specifically as security considerations

permit, inform the alien of the nature of the case against him, shall fix the time and place of the hearing, and shall inform the alien of his right to be represented, at no expense to the Government, by counsel of his own choosing.

(b) Every alien for whom a hearing has been scheduled under paragraph (a) of this section shall be entitled (1) to appear in person before the special inquiry officer, (2) to be represented by counsel of his own *choice*, (3) to have the opportunity to be heard and to present evidence, (4) to cross-examine the witnesses who appear at the hearing, except that if, in the course of the examination, it appears that further examination may divulge information of a confidential or security nature, the special inquiry officer may, in his discretion, preclude further examination of the witness with respect to such matters, (5) to examine any evidence in possession of the Government which is to be considered in the disposition of the case, provided that such evidence is not of a confidential or security nature the disclosure of which would be prejudicial to the interests of the United States, (6) to have the time and opportunity to produce evidence and witnesses on his own behalf, and (7) to reasonable continuances upon request, for good cause shown.

(c) Any special inquiry officer who is assigned to conduct the hearing provided for in this section shall have the authority to: (1) Administer oaths and affirmations, (2) present and receive evidence, (3) interrogate, examine, and cross-examine under oath or affirmation both the alien and witnesses, (4) rule upon all objections to the introduction of evidence or motions made during the course of the hearing, (5) take or cause depositions to be taken, (6) issue subpoenas, and (7) take any further action consistent with applicable provisions of law, executive orders, proclamations, and regulations.

[22 FR 10828, Dec. 27, 1957, as amended by Dept. Reg. 108.478, 27 FR 1358, Feb. 14, 1962]

§ 46.5 Hearing procedure before special inquiry officer.

(a) The hearing before the special inquiry officer shall be conducted in accordance with the following procedure:

(1) The special inquiry officer shall advise the alien of the rights and privileges accorded him under the provisions of § 46.4.

(2) The special inquiry officer shall enter of record (i) a copy of the order served upon the alien temporarily preventing his departure from the United States, and (ii) a copy of the notice of hearing furnished the alien.

(3) The alien shall be interrogated by the special inquiry officer as to the matters considered pertinent to the proceeding, with opportunity reserved to the alien to testify thereafter in his own behalf, if he so chooses.

(4) The special inquiry officer shall present on behalf of the Government such evidence, including the testimony of witnesses and the certificates or written statements of Government officials or other persons, as may be necessary and available. In the event such certificates or statements are recieved in evidence, the alien may request and, in the discretion of the special inquiry officer, be given an opportunity to interrogate such officials or persons, by deposition or otherwise, at a time and place and in a manner fixed by the special inquiry officer: *Provided*, That when in the judgment of the special inquiry officer any evidence relative to the disposition of the case is of a confidential or security nature the disclosure of which would be prejudicial to the interests of the United States, such evidence shall not be presented at the hearing but shall be taken into consideration in arriving at a decision in the case.

(5) The alien may present such additional evidence, including the testimony of witnesses, as is pertinent and available.

(b) A complete verbatim transcript of the hearing, except statements made off the record, shall be recorded. The alien shall be entitled, upon request, to the loan of a copy of the transcript, without cost, subject to reasonable conditions governing its use.

(c) Following the completion of the hearing, the special inquiry officer shall make and render a recommended decision in the case, which shall be governed by and based upon the evidence presented at the hearing and any evidence of a confidential or security nature which the Government may have in its possession. The decision of the special inquiry officer shall recommend (1) that the temporary order preventing the departure of the alien from the United States be made final, or (2) that the temporary order preventing the departure of the alien from the United States be revoked. This recommended decision of the special inquiry officer shall be made in writing and shall set forth the officer's reasons for such decision. The alien concerned shall at his request be furnished a copy of the recommended decision of the special inquiry officer, and shall be allowed a reasonable time, not to exceed 10 days, in which to submit representations with respect thereto in writing.

(d) As soon as practicable after the completion of the hearing and the rendering of a decision by the special inquiry officer, the district director shall forward the entire record of the case, including the recommended decision of the special inquiry officer and any written representations submitted by the alien, to the regional commissioner having jurisdiction over his district. After reviewing the record, the regional commissioner shall render a decision in the case, which shall be based upon the evidence in the record and on any evidence or information of a confidential or security nature which he deems pertinent. Whenever any decision is based in whole or in part on confidential or security information not included in the record, the decision shall state that such information was considered. A copy of the regional commissioner's decision shall be furnished the alien, or his attorney or representative. No administrative appeal shall lie from the regional commissioner's decision.

(e) Notwithstanding any other provision of this part, the Administrator of the Bureau of Security and Consular Affairs referred to in section 104(b) of the Immigration and Nationality Act, or such other officers of the Department of State as he may designate, after consultation with the Commissioner, or such other officers of the Immigration and Naturalization Service as he may designate, may at any time permit the departure of an individual alien or of a group of aliens from the United States if he determines that such action would be in the national interest. If the Administrator specifically requests the Commissioner to prevent the departure of a particular alien or of a group of aliens, the Commissioner shall not permit the departure of such alien or aliens until he has consulted with the Administrator.

(f) In any case arising under §§ 46.1 to 46.7, the Administrator shall, at his request, be kept advised, in as much detail as he may indicate is necessary, of the facts and of any action taken or proposed.

[22 FR 10828, Dec. 27, 1957, as amended, 26 FR 3069, Apr. 11, 1961; Dept. Reg. 108.478, 27 FR 1358, Feb. 14, 1962]

§ 46.6 Departure from the Canal Zone, the Trust Territory of the Pacific Islands, or outlying possessions of the United States.

(a) In addition to the restrictions and prohibitions imposed by the provisions of this part upon the departure of aliens from the United States, any alien who seeks to depart from the Canal Zone, the Trust Territory of the Pacific Islands, or an outlying possession of the United States shall comply with such other restrictions and prohibitions as may be imposed by regulations prescribed, with the concurrence of the Administrator of the Bureau of Security and Consular Affairs and the Commissioner, by the Governor of the Canal Zone, the High Commissioner of the Trust Territory of the Pacific Islands, or by the governor of an outlying possession of the United States, respectively. No alien shall be prevented from departing from such zone, territory, or possession without first being accorded a hearing as provided in §§ 46.4 and 46.5.

(b) The Governor of the Canal Zone, the High Commissioner of the Trust Territory of the Pacific Islands, or the governor of any outlying possession of

the United States shall have the authority to designate any employee or class of employees of the United States as hearing officers for the purpose of conducting the hearing referred to in paragraph (a) of this section. The hearing officer so designated shall exercise the same powers, duties, and functions as are conferred upon special inquiry officers under the provisions of this part. The chief executive officer of such zone, territory, or possession shall, in lieu of the regional commissioner, review the recommended decision of the hearing officer, and shall render a decision in any case referred to him, basing it on evidence in the record and on any evidence or information of a confidential or a security nature which he deems pertinent.

[22 FR 10829, Dec. 27, 1957, as amended, 26 FR 3069, Apr. 11, 1961]

§ 46.7 Instructions from the Administrator required in certain cases.

In the absence of appropriate instructions from the Administrator of the Bureau of Security and Consular Affairs, departure-control officers shall not exercise the authority conferred by § 46.2 in the case of any alien who seeks to depart from the United States in the status of a nonimmigrant under section 101(a)(15) (A) or (G) of the Immigration and Nationality Act, or in the status of a nonimmigrant under section 11(3), 11 (4), or 11(5) of the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations (61 Stat. 756): *Provided*, That in cases of extreme urgency, where the national security so requires, a departure-control officer may preliminarily exercise the authority conferred by § 46.2 pending the outcome of consultation with the Administrator, which shall be undertaken immediately. In all cases arising under this section, the decision of the Administrator shall be controlling: *Provided*, That any decision to prevent the departure of an alien shall be based upon a hearing and record as prescribed in this part.

[26 FR 3069, Apr. 11, 1961; 26 FR 3188, Apr. 14, 1961]

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AFFIDAVIT

The affiant, first being duly sworn, deposes on oath and states as follows:

1. I am of sound mind and lawful age and make this affidavit of my own free will.

2. I reside at 71 East 7th Street, New York, New York 10003.

3. I am employed on a contract basis as a certified English-Ukrainian-Polish interpreter by the Immigration and Naturalization Service, U.S. Department of Justice.

4. On or about 11:45 p.m. on the evening of Thursday, October 24, 1985, I received a telephone call from an INS officer in Louisiana. He informed me that he was holding an individual who needed a Ukrainian interpreter.

I asked the as yet unidentified individual whether he heard me. He said yes, I hear you beautifully. He said, you have to come to me here immediately. I replied, I am too far, I am in New York.

I asked all the questions asked by the INS officer. We started with name, and he answered Myroslav Vasiliovych. I asked his family name and he replied, Medvid, like the animal. [Medvid in Ukrainian means bear.] His father is Vasyl Medvid, his mother, Anna Lakhovsky. Medvid stated if I could not understand, he could speak in Polish, because his mother was of Polish ancestry. The conversation continued in Ukrainian, by agreement.

He stated he was from Lviv oblast (region), Ukraine. He stated he was from the Sokal region, village of Silets. He was born there. His father lives in that village and he was born there as well.

There were no questions asked regarding his education. I had difficulty hearing the INS officer, who appeared to be on a second phone. I had to repeat various questions and answers several times on numerous occasions. The conversation took a long time, about one hour.

I had no difficulty in hearing and understanding Medvid. I asked him before each question whether he heard and understood me. He replied affirmatively each and every time.

He was asked how long he had been on shore. Medvid could not tell. He suggested 4 - 6 hours, and added, that the official should know, unless he can't see that I (Medvid) am still wet.

He stated he did not see any Immigration officials board the ship and said the ship was standing in line. He said he did not see any inspection.

He said he jumped because he wanted to live in an honest country. In response to the question regarding the particular reason for jumping, Medvid responded there were many reasons which could not be told in a short time. The INS officer tried to get some more particulars, but the response was the same: a lot of reasons.

The INS officer became impatient and asked me to ask whether he wanted political asylum, because he could keep him here only under those circumstances. I asked him that and he unhesitatingly responded "yes."

The INS officer asked again and the response was the same.

Medvid stated he was very much afraid and wanted to know what would happen to him. The INS officer told me to calm him down and no harm would come to him. Medvid would be arrested and he would stay that way until the next morning when INS would call me again.

I told the officer that I would be leaving New York next afternoon.

Medvid protested his arrest; said he did nothing wrong and was never arrested in his life.

The officer said he would call again the next day. He did not call, despite my waiting. I did not leave New York until Saturday morning.

I gave a 5-page statement under oath to INS investigators who came to my summer house on Sunday morning, before 6:00 a.m., on October 27, 1985.

One of the agents told me that "somebody goofed and that he should jump into the Mississippi himself."

Further affiant sayeth not.

Irene Padoch
IRENE PADOCH

Subscribed and sworn to before me this 1st day of November, 1985.

Elizabeth A. Gibbs
Notary Public
District of Columbia

My commission expires June 14, 1990.

Senator SIMPSON. Now, Commissioner Nelson, please. I do appreciate your bringing these facts to us, Commissioner Nelson. I want to say that in my dealing with you, I have never seen you sweep anything under the rug. I have seen you take your lumps, especially with regard to the issue of illegal immigration.

I think you have been candid and direct in describing the strengths and the weaknesses of the system. Our job is to see, as an oversight committee, that it works, and we want to ensure that it does.

Out of fairness to us all, including your loyal chairman, I am going to take 10 minutes of questions and then go to the other members and limit ourselves in that manner. If we need a second round, we can do that, but I think that is important, with the four of us here, and perhaps Senator Kennedy will be here later.

Let me go ahead, then. Let me ask you this. How are INS enforcement officers currently made familiar with the immediate action political asylum procedures? What would have occurred if the immediate action procedures had been properly followed by the Border Patrol officers? Just review with me and with the panel, please, how this case might have been handled differently.

Mr. NELSON. There are really two parts to your question, Senator. Let me take the last first. Had the procedures been followed—and again, I would call your attention and the other Senators to the attachment, which are the INS operating instructions which flow under the Code of Federal Regulations procedures dealing with that, and I have alluded to most of that in my testimony.

But in a case like this—and we are talking about a potential asylum claim, as well as an actual one—where there is an indication of somebody from the Soviet Union, for example, that they should have contacted their supervisor, in turn, their chief Border Patrol agent, and then the district director—normally, these will come under the district officers rather than the Border Patrol. But then in turn, after evaluation, they would contact the headquarters, Associate Commissioner of Examinations, who has the overall responsibility in this area, and that person in turn is required to contact the State Department and pursue it from there. So there are multisteps that would assure a sensitive case, or as indicated here, this type of case. We believe that there would have been no question had they held Mr. Medvid overnight that they would have pursued these issues in more detail and interviewed in more detail and got an opinion from the Bureau of Human Rights and Humanitarian Affairs in the State Department.

Now, the first part of your question related to, as I heard it, training. Of course, we have like all Government agencies, voluminous procedures for asylum, for handling crewmen, for all kinds of inspectional procedures, and all of those procedures are part of the various training that our Border Patrol agents and other immigration officers receive primarily in their basic training, but there should be followup training, also.

Senator SIMPSON. I understand that INS agents were on the ship from Friday afternoon, I believe, until Monday, when Mr. Medvid was then removed to a U.S. naval hospital.

Could you tell us how he was treated during that time on the ship and whether the INS agents had continual contact with him in that situation?

Mr. NELSON. As you indicate, they were onboard from midafternoon Friday, when we first learned of this situation, until the time the matter was concluded. They did have access to him on several occasions, as I recall, the first time for several hours. He was under sedation at that time, so they were not really able to communicate with him. And the Soviet captain indicated that they no longer could remain with him, but could remain onboard, which they did throughout. Then a U.S. Navy doctor was allowed onboard at a later time; he did interview him. At that point, he was alert, and the doctor concluded that he appeared to be in good physical shape and alert.

Senator SIMPSON. Of course, in our review of refugee situations, we now have the Refugee Act of 1980, which changed the definition of "refugee" from one fleeing a Communist country and other certain selected areas to, as I say, the well-founded fear of persecution based on race, religion, and so on.

Newspaper accounts here of the INS interview with Mr. Medvid seem to allege that the alien stated he did not want to return to the Soviet Union because of "moral and political reasons."

Now, would an alien's mere dislike for his country based on moral and political opinions or grounds establish his eligibility for political asylum in this country under the terms of the Refugee Act of 1980?

Mr. NELSON. As you know, Mr. Chairman, the asylum cases must be determined on a case-by-case basis, we must look into the facts and all the relevant background on that case. Those words alone would probably not sustain an asylum case, but the issue here really was whether those words should have triggered further inquiry, and clearly we believe, as I testified, that that should have been done initially.

But you are right, of course, on the basic assessment of the Refugee Act of 1980, it must be a well-founded fear of persecution based on politics, race, sex, whatever, and that is a country-neutral procedure as established by the Congress in that Act.

Senator SIMPSON. Under the Immigration and Nationality Act—a difficult enough piece of goods to interpret, as I have found in my duties—the INS is allowed to apply a summary exclusion procedure to alien crewmen who have no authorization to be in the United States and no apparent fear of persecution.

It seems to me, then, that alien crewmen, interestingly enough, are a very specially defined class of aliens in the Immigration Act, and they seem to have fewer rights than many other illegal aliens—at least, that is my cursory review—including those who illegally come across our borders.

Could you please describe to me briefly the special provisions in current immigration law which apply to all alien crewmen?

Mr. NELSON. Yes, Mr. Chairman. Again, I am not a technical expert in immigration law, either, but I think as you indicate, there are special procedures for crewmen, and I think part of that, as I understand it, goes back historically, because of the crewmen, in going back and forth, you do get ship-jumpers and deserters, and

under our laws, they are handled in a more summary procedure. You cannot have summary exclusion procedures for crewmen that might not apply to other aliens, legal or otherwise.

So that is true, and I think that is possibly some of the background here. As I say, I certainly in no way want to excuse the behavior of our people. We have indicated we think it was wrong; their judgment was poor, they did not follow instructions, but they are used to dealing with a lot of routine ship-jumpers, if you will, that are handled. The manner in which this was handled. They ascertain the situation, return them to the Shipping Agents, who in turn return them to the vessels.

However, I must indicate that even though the crewmen are subject to more summary procedures, they do have the full opportunity to claim political asylum. So if a crewman does make a claim for political asylum, that crewman is entitled to those procedures the same as anybody else would be.

Senator SIMPSON. And aren't these particular agents of the INS in this area more alert to issues of asylum, generally, in these last 5 years than at any time before? I would think they would be.

Mr. NELSON. I believe so. Again, as indicated, we have training in these procedures. We have been very involved in the whole asylum process, of course, as you well know from our general oversight hearings before this committee. We have made great strides to improve the procedures generally for asylum cases to process cases much more expeditiously and fairly. We are considering other asylum regulations currently.

So I think there has been a great deal more attention to this, generally.

Senator SIMPSON. I think it is important to reflect, at least in my time on the subcommittee, that the INS has cleared a backlog of about 50,000 asylum applications——

Mr. NELSON. That is correct.

Senator SIMPSON [continuing]. In the last 3 years.

Mr. NELSON. That is right. We are down to fairly current processing now.

Senator SIMPSON. And all of them done on a case-by-case basis.

Mr. NELSON. Yes, sir.

Senator SIMPSON. I have not used my entire time. I want you all to know that.

Now I am going to go to Senator Grassley.

Thank you.

Senator GRASSLEY. Thank you, Mr. Chairman.

I want to start by quoting the Padoch statement:

> The INS officer became impatient, and asked me to ask whether he wanted political asylum, because he could keep him here only under those circumstances.
>
> I asked him that, and he unhesitatingly responded, "Yes." The INS officer asked again, and the response was the same.

Now, quoting from the operating instructions for immediate action cause under the definition, it refers to "any national of the Soviet Union" and that is 208.8, "Processing Asylum Requests, Immediate Action."

Were any of these instructions followed?

Mr. NELSON. No. As I have testified, Senator Grassley, they were not followed in this case.

Senator GRASSLEY. OK. Then I would like to have for the record why not.

Mr. NELSON. That is difficult to ascertain. I believe, as you indicated in Mrs. Padoch's statement—I have not seen, I do not believe, the statement you alluded to—we immediately contacted her after we learned of this situation, tracked her down in upstate New York and obtained a statement from her. I know she has maintained throughout that she did ask—when asked by our people to inquire about asylum, she did so. And I know that she has consistently stated that the answer that he, Medvid, gave was, "Yes." Our agents, in their signed statements—and our investigation is underway—indicated they did not understand that. There was no reason to believe they did not have a good faith misunderstanding, because that is their position. But even with—I might just add here, Senator Grassley—I think the point is that we are not necessarily disputing Mrs. Padoch. There was obviously some misinterpretation or misunderstanding. Irrespective of that, as I testified, there was enough indication that the officers should have followed the procedures you allude to. But I cannot go into why they did not. They obviously did not think it was necessary, or——

Senator GRASSLEY. Can you tell me who made the decision not to follow the instruction?

Mr. NELSON. They did not follow them. Whether they were not aware they existed, or they believed that there just was no issue of asylum, and therefore it was proper for them to terminate it without proceeding, that is hard to know. We do not know that. They clearly did not follow the instructions.

Senator GRASSLEY. But you have not pinpointed from your standpoint as the Administrator of the organization who made the decision not to follow the instructions?

Mr. NELSON. The two agents involved made the decision. There is no indication they made a conscious decision not to follow the instructions. They made a conscious decision that there was not an asylum claim being made, and they were satisfied that ended the matter.

Senator GRASSLEY. Has the officer explained why he ignored the exchange between Medvid and Padoch?

Mr. NELSON. I think I have responded to that, Senator Grassley. There seemed to have been, or clearly was, based on the information we have, a misinterpretation. Apparently, the telephone connection was not good, from what I hear. I understand the conversation between Mrs. Padoch and Medvid, along with the Border Patrol agent, was a very lengthy one. There seems to be an honest difference of opinion as to what was concluded.

There is no reason to believe that the agents understood that he was claiming asylum and ignored it. It is almost inconceivable that that happened. They just did not understand that to be the case.

But nevertheless, as indicated, there were enough facts that they should have realized that this should have been pursued further.

Senator GRASSLEY. But it is pretty clear that, having been asked twice and receiving the same response twice, that the officer did ignore the operating instructions, at least from the standpoint he did not tie those specific instructions in with the fact that this person was asking for asylum.

Mr. NELSON. He failed to follow operating instructions that should have been followed, no question about it.

Senator GRASSLEY. Now, referring to portions of the statement dealing with the arrest and the quotes from that affidavit, was the officer referring to protective custody in the operating instructions 208? And I will refer here to the fact that:

> Medvid stated he was very much afraid and wanted to know what would happen to him. The INS officer told him to calm down, and no harm would come to him. Medvid would be arrested, and he would stay that way until the next morning when the INS would call me again.
>
> I told the officer that I would be leaving for New York next afternoon. Medvid protested his arrest and said he did nothing wrong and was never arrested in his life before.

Mr. NELSON. Again, I cannot comment on that statement, not having seen it. But there was certainly no arrest involved. We do not arrest people who are being interviewed or seeking asylum, and obviously he was not arrested here; he was returned, so there was no arrest involved.

Senator GRASSLEY. Was he referring to the "protective custody" section of operating instruction 208?

Mr. NELSON. Possibly so, Senator. I do not know. I think there was apparently a thought they would keep him overnight, and I do not know, either, why that was not pursued. That might have well resulted had they done so.

Senator GRASSLEY. I can appreciate the fact that maybe you cannot answer, but did you ask the Border Patrol people if they were speaking of protective custody?

Mr. NELSON. I do not know if that specific question has been asked. We have taken a very detailed statement and are in the process of reviewing that, and it covered a lot of issues. I am not sure whether that specific question was asked.

Senator GRASSLEY. OK. So I do not suppose we know, really, if it was explained to Medvid that this could be protective custody instead of arrest, in the sense that you are arrested for doing something wrong.

Mr. NELSON. From my review, I do not know that there has ever been any discussion with Medvid about an arrest. That has not come to my attention.

Senator GRASSLEY. According to Padoch's affidavit, Medvid would be held until the next morning. Did the Border Patrol then change their minds and call the shipping agent?

Mr. NELSON. I understand from Mrs. Padoch's testimony, that statement was made. It is possible that it was. I believe one of the Border Patrol agents, again from my initial review of some of the preliminary investigation, indicated something to that effect. So I do not know what transpired in their minds from that point to calling the shipping agent.

Apparently, they in their own mind honestly believed, in interviewing him and the conversation with Mrs. Padoch, that he was not pursuing an asylum claim, and therefore, they believed this was a ship-jumper type of situation and called the shipping agent.

Again, that was not a proper conclusion, as testified to.

Senator GRASSLEY. Then we do not know why he was returned that evening, instead of the next morning, as was indicated?

Mr. NELSON. Other than what I just testified to.

Senator GRASSLEY. Can you answer for me whether instructions were received from higher up in the chain of command to return him immediately, as opposed to the next morning?

Mr. NELSON. There were no such instructions. The first thing we learned of this situation was the next afternoon, at about 3 or 3:30 p.m.

Senator GRASSLEY. Is special attention given to these types of situations in the training of Border Patrol?

Mr. NELSON. Yes.

Senator GRASSLEY. Is it common practice to return seamen to ships accompanied by U.S. Government officials?

Mr. NELSON. I believe so. I am not positive, but there are routine procedures for returning ship deserters, and I believe the procedures followed here are those that are normally used. They call the shipping agent, the shipping agent comes to the Border Patrol Immigration Office and takes the crewman here. That happened in this case, too. There is a lot of confusion in the press, that the Border Patrol or INS was present during the taking of Medvid to the Soviet ship. That was not true. We turned him over to the shipping agent; they took him from there. We were not present again.

Senator GRASSLEY. Are we going to rethink that policy?

Mr. NELSON. Yes, sir. As I testified, I think we are looking now at all aspects of that. I believe that the basic procedures are sound, and I will stick with that because they do cover it pretty thoroughly. But we are looking, as I indicated in the testimony. We have set up a task force and they are to report back in 2 weeks, looking at all aspects of this matter to determine whether existing procedures should be modified in any way.

Senator GRASSLEY. There are about eight Soviet ships now in the Louisiana area. Have there been any other incidents of this type that we do not know about?

Mr. NELSON. Not that I am aware of—and I am sure if there were, I would be.

Senator GRASSLEY. For the record, specifically what time was he returned to the ship?

Mr. NELSON. The initial return?

Senator GRASSLEY. Yes.

Mr. NELSON. Somewhere—approximately midnight, I believe.

Senator GRASSLEY. When was the State Department notified?

Mr. NELSON. Well, we first heard about it, as I say, about 3 or 3:30 p.m. on the following day, which was a Friday, as I recall. And we immediately notified the State Department at that time; as far as I know. I am sure that was their first knowledge.

Senator GRASSLEY. What led to the notification of the State Department?

Mr. NELSON. After through the chain of command, our Border Patrol Chief and the district director in New Orleans learned of this issue, he then verified——

Senator GRASSLEY. How did he learn of the issue?

Mr. NELSON. As I understand it—and possibly others could clarify it more—as I understand it, Senator, Mrs. Padoch apparently had called her friend in New Orleans, a person of Ukrainian nationality. He apparently then called our office to inquire about this

case. That was the first knowledge of our district office, and that kind of contact then set in force all the procedures that followed, that we then learned about the circumstances, and as testified, as soon as we learned about it here in Washington, we contacted the State Department, and we started the process with the Coast Guard and others, to be sure the vessel did not leave and to make efforts to remove Medvid for further interview.

Senator GRASSLEY. Can you identify who notified the State Department and then, why was the State Department notified after the decision to return Medvid to the ship?

Mr. NELSON. Well, as I indicated earlier, Senator, the procedures were not followed properly initially, and that is why the State Department did not get notified then, as well as many other people who did not get notified. Once we learned about it, they were notified immediately. As I recall, Mr. Brandemuehl, Assistant Commissioner for Border Patrol, or Mr. Kaiser, the Associate Commissioner of Enforcement, notified the State Department—at my request.

Senator GRASSLEY. Thank you. My time is up.

Senator SIMPSON. Senator Simon.

Senator SIMON. Thank you.

Commissioner, in your statement here you say, "The crew was inspected by the Immigration Service, and with the exception of four officers, was denied entry and detained onboard in late afternoon."

Is that fairly common procedure that you simply do not let—is it true for Soviets and for all ships, or what is the procedure?

Mr. NELSON. That, I believe, Senator Simon, is the procedure. Whether there are differences for Soviet ships and others, I am not sure. But this would be part of the normal inspectional process to allow some onshore and to restrain others onboard. I will have to tell you later whether there are differences for Soviet or Iron Curtain country ships, compared to others. I do not know that.

Senator SIMON. All right. Well, I would be interested in knowing that.

Mr. NELSON. But that was clearly a standard procedure for the Soviet ships, in any event.

Senator SIMON. Well, I would be interested in knowing if we follow different procedures and what those procedures are.

Mr. NELSON. Fine.

Senator SIMON. Second, in your statement you say, as has been commented on before, that the processing officer, skipping a few lines here, "* * * made a determination that the Soviet sailor was not seeking political asylum."

Then, I read the statement by Mrs. Padoch, and I find not two, but in fact at least five clear indications that the sailor said he jumped because he "wanted to live in an honest country." A question was asked regarding his reason for jumping, and he said there were "many," and that was repeated, and in fact, that makes it six. Then, twice, he was asked whether he wanted political asylum, and both times said "Yes." And then finally, he said he was very much afraid.

And obviously, your immigration officer understood that part of the conversation, according to this.

Mr. NELSON. It is hard, of course, Senator Simon, for me to comment on what was in the minds of various people. I am aware of Mrs. Padoch's statement that we took, and I am sure the one you have is parallel to that. I know she has been consistent in that.

I know our officers have stated they did not understand it that way. I cannot explain that. As indicated, I do not think there is a reason to get into a debate as to who said what here. Clearly, in any event, there were enough circumstances, even without the interpreter involved, to say this person should have been held and these other procedures followed.

So there is no doubt that they should have followed further procedures.

And they did—I think in defense of our people, they certainly felt the need to get an interpreter, went to some length to find Mrs. Padoch in New York. They learned that he was from the Ukraine—apparently, Medvid pointed to a map on the wall, of the Soviet Union, and indicated where he was from, and they recognized that was the Ukraine, and actually went to a list that had a Ukrainian interpreter, and that was Mrs. Padoch, and they tracked her down in New York to get her.

So they went through the effort to try to find some information so they could make a determination. It was after that, the telephone communication and the lack of understanding for whatever reasons—and we are still trying to find out more about that—that they made the interpretation, wrongly, that this was not an asylum case, or a potential asylum case.

Senator SIMON. OK. And then when they went onto the ship and they finally talked to him, they found that he was under sedation, which again, it seems to me, ought to be an indication—or could be an indication—that something is wrong.

Then an interview is conducted by a State Department official with an INS representative present. Here is a man whose native tongue—his mother is Polish. He speaks Ukrainian, he speaks Polish. Russian is his third language.

What language was this interview conducted by the State Department official in?

Mr. NELSON. I think Mr. Woessner might be better able to answer that. As I understand, the State Department representative does speak Russian. They did have, I believe, a Russian interpreter. I also understand that—and possibly the State Department can be more specific—that Medvid understood Russian well, and in fact, communicated himself in Russian.

But again, I would defer to State to elaborate on that.

Senator SIMON. All right. But it seems to me there clearly were enough warning signs to indicate a problem. Let me ask you this. What is the status of that ship right now?

Mr. NELSON. As I understand it, of course, it initially came into New Orleans to load grain, and it was waiting in line. We, of course, restrained it from proceeding to the dock until this matter was concluded, and after Medvid was returned, then they were allowed to proceed to load.

I do not exactly know the timeframe. As I understand it, it is still in the New Orleans area, and what the departure time is, I am not sure.

Senator SIMON. In view of all the questions that have been raised, is there any possibility that we can follow the suggestion of Senator Humphrey and work out with the Soviets that this sailor be turned over to a neutral country before that ship leaves our territorial waters?

Mr. NELSON. I might make two comments, Senator Simon, one on the situation—and again, I think Mr. Woessner will testify in even more detail than I did—there was a 24-hour period under which Medvid was under full U.S. control. Lengthy personal interviews took place with the State Department and INS representatives. Medical exams were conducted by U.S. doctors, a psychiatric exam by U.S. doctors. He was fully under our control, on our soil. He——

Senator GRASSLEY. In the presence of Russian people, right?

Mr. NELSON. That is correct, yes.

Senator GRASSLEY. Constantly in the presence of Russian people.

Mr. NELSON. That is orrect, as I understand it—but on U.S. vessel and U.S. soil, and there was a very thorough interview conducted, and it was the conclusion of all those present that he repeatedly stated he wanted to return home; he unequivocally stated that, repeatedly stated it, and that the conclusion was that this was his desire, and based on this thorough review, that was the decision, and that was the action to follow. This was reviewed at high levels in this Government, and there is no reason to believe that was not appropriate and conclusive of the matter.

On the question of the neutral country, I only heard that thought when you expressed it a few minutes ago, so like everything, probably due some reflection, but I might indicate first of all, my immediate impression, with all due respect, Senator Humphrey, is what country in the world better than the United States can give an honest, fair determination on this. And to sort of question our own ability or honesty and reasonableness, I think, is maybe not accurate, and I think we are doing a good job in that area, and we do.

Second, there are many thousands of asylum claims, not many from the Soviet Union, but there are many thousands of asylum claims. And I would wonder if we would set up a procedure for a neutral country, if they even would agree, whether we would open the door for Salvadorans or Guatemalans, or many others to say, "Well, we do not believe the United States can make an honest determination. Let us get a third country involved." And I would only suggest to the committee as well as the administration that that is due some needed reflection.

Senator SIMON. Well, it does seem to me that the relations with the Soviet Union are somewhat in a different category, for obvious reasons. And it is also obvious that we are in a very unusual situation right now, with the summit coming up. And none of us here wants to create any problems for that summit meeting. But at the same time, we do not want to see some poor young Soviet sailor abused.

Mr. NELSON. I can understand that, Senator, and I can assure you, I was present at the State Department Command Center during that entire weekend, and there was never any reference at all to the summit, or what we do to resolve this thing to avoid any confrontation.

In fact, as the President has indicated and others, we were fully prepared to take him off by necessary force, if required, and it was not required, because the Soviets did backdown and allow him to be transferred to our vessel. So that was never a consideration, and I think we took very strong action after the initial phase, which was unfortunate, to be sure he was brought to our territory, our vessel, and then to our land, again over very strenuous objection by the Russians, and conducted this interview and this medical examination alluded to.

Senator SIMON. I understand INS was supposed to deliver a report yesterday to the subcommittee on this whole incident. Is that correct?

Mr. NELSON. I have no such understanding. We delivered a report yesterday morning at the request and the direction of the Attorney General to the Attorney General for his review and the executive branch review, and that review is under way. I am not aware of any request from the subcommittee for a report.

Senator SIMON. Is there any reason we could not get a copy of that report?

Mr. NELSON. Well, certainly not at the present time. Obviously, the Attorney General is not even in town at the moment and will return tomorrow. The Deputy Attorney General has it and has reviewed it, so we are in the process of the internal review. There might be other investigation aspects to review. We would certainly consider, no question, about what we can and should turn over at a later date.

Senator SIMON. Then one final question, Mr. Chairman.

The INS officer who was working with Mrs. Padoch said that he would call her again the next day. No such call was placed. Do you have any knowledge of why no such call was placed, or what the situation was?

Mr. NELSON. No; I do not.

Senator SIMON. I have no further questions.

Senator SIMPSON. Thank you, Senator Simon.

Senator Denton, please.

Senator DENTON. Thank you, Mr. Chairman.

Mr. Nelson, I am not going to labor the propriety or impropriety of your regulations and whether or not they were followed. You have established the point that you think your procedures are adequate.

I just want to sort of generalize and have you comment as to your judgment of the postulation I am about to make. Seaman Medvid was on the telephone with Mrs. Padoch, who has sworn that when she asked him whether he sought political asylum, he unhesitatingly responded "Yes."

She states under oath that the INS officer asked again, and the response was the same.

Apparently, there was some misconstrual or some misunderstanding between her and the INS officer as to that response from Seaman Medvid.

Let us assume for a moment that Mrs. Padoch is telling the truth, which I believe, and that the man said he wanted asylum—let us skip whether or not there was a miscommunication between her and the INS officer—then, I question the judgment applied to

the man's changing his story after he goes back aboard the Soviet ship. I find that incredible naivete.

I can think of 460 men who would say the same thing as I, because they saw it happen perhaps 600 or 700 times in their own experience. I could probably present here tens of millions of people from the Soviet Union who would be amazed at the credulity with which you regard his second statement. Having been caught seeking asylum, if Mrs. Padoch's statement is correct, and I ask you to assume that that is true—having been caught in that act and returned aboard the ship and confronted, undoubtedly threatened, coerced, and so on, why would the INS believe that he would not change his story simply because he is sitting on U.S. soil, whether or not Russian observers were sitting there? They could have planted fears in his mind beyond your imagination, which would have caused him justifiably to recant and change his story.

Why are we saying that the United States of America is a good country which has made a pure judgment on this in the face of such, what I will call, incredible naivete?

Mr. NELSON. Senator, first of all, you say we say the procedures are OK, and as I say, I think they are fundamentally sound, but we do plan to review them. And I will say that I know the people from the State Department and from INS who went down to conduct the interviews and examination after removal from the Soviet vessel, I am sure everybody—I know our person did; he told me that—had the feeling that he probably wanted asylum. I think we started out with that basis.

All I can recount—and again, Mr. Woessner will testify for the State Department—is the thorough, 24-hour, several-interview, medical examination, psychological examination, where he repeatedly, many, many times—our person said at least 6 times, Medvid maintained he wanted to go home. There was never any indication.

Now, I guess the question is, well, despite his protestations—and I realize there is that thought as to what happened in the interim; that obviously is a concern, as to coercion and intimidation—but that was the repeated statement that he made about wanting to go home. He never deviated from that. In fact, as I understand it, he became quite irate in insisting on that. It was the conclusion of the State Department representative who deals in these matters and ours, that that was his desire at that time, and was there any basis to pursue beyond that, and it was determined that there was not.

Senator DENTON. Well, as I say, I consider that naive. I think the much more credible belief on your part would have been—to take the example of a man like Cardinal Mindzenty, who having been subjected to painful experiences, having been inoculated and so on, in the fear of that being done again would, in front of Western free press state what his captors told him to state. I watched hundreds of men do similar things.

I do not understand why it is such a secret that a man can be intimidated to change his story by virtue of applying pain to him, saying, that same pain will be applied to your mother, or we will do this or that to your mother, if you do not do it. Medvid had probably never heard that before. But once he tried to make his escape—and if you do not think it was escape, why is there an Iron Curtain? Why did John Kennedy go and say, "I am a Berliner"?

What has happened to the spirit of the United States as we look at that Iron Curtain? Is it not on that ship, too?

What has changed in the Soviet Union that requires, according to your response to Senator Humphrey's question, that we should treat them all the same—that the procedures are OK because we made an amendment to the Refugee Act, eliminating the distinction between individuals fleeing Communist countries and those who are fleeing non-Communist?

I am not being a sensationalist when I say this. I am speaking commonsense, man. And I do not know of anybody who has served in the armed services who does not know I am stating commonsense. I do not know why the State Department or the INS do not see it as commonsense. I believe the citizens of the United States believe it to be commonsense. And therefore, the odds are, in my view right now, that a truthful lady has given sworn testimony which makes me believe we have sent a man back to God-knows-what, and then given the signal back to all of the folks who want to get out of that arrangement that they had better not rely on us, just as the Shah of Iran and other leaders have not been able to rely on us, because we are not looking at things realistically.

I may be dead wrong, but I am not looking for television cameras or any fame or whatever, when I say this. I say it because my whole consciousness motivates me to say it, because I think we are sick over here with that kind of naivete and complacency, and I believe it pervades every activity, every kind of response, every kind of regard we have for the Soviet Union.

I did not hate the North Vietnamese. I do not hate the Russian people. I love them. My religion tells me to love them, and I do. But I do not love that system, and man, I believe it is very, very bad, and I believe this guy should have been obviously understood to have been coerced into changing his story.

I will not ask you by specific questioning, to go into, the misunderstanding, but could you generally outline—we will be asking the same question to Mrs. Padoch later—what in the world could have happened to account for the difference between what she says here about that first interview and the INS and State's interpretation of what was said on that telephone?

Mr. NELSON. I cannot really probably elaborate any more, Senator, than I have to previous questions. Of course, understand we contacted Mrs. Padoch. She was on the list of our interpreters, so we made an effort to do so, to contact her. It is hard to understand. I know her testimony and her statements have been repeated that that was her interpretation, and she passed it on. Our people say they did not understand it that way, and I do not think there was any basis to question their honest understanding. We do question their judgment, there is no question about it.

We hope to maybe clear the air more. Irrespective of what Mrs. Padoch said—and I again just want to emphasize this—there were enough indications they should have retained Medvid under their control for further interview.

Senator DENTON. But not after the second interrogation before which he had had a night's rest and so on. I think that is very, very poor judgment.

I thank you for the time, Mr. Chairman.

Senator SIMPSON. I think we can do a quick second round. We do have rollcall votes coming very shortly.

Senator SIMON. Mr. Chairman, may I ask unanimous consent that we permit our colleague, Senator Humphrey, to also ask questions?

Senator SIMPSON. I talked with Senator Humphrey's person, and I am not trying to preclude him. I asked him to come. I hoped he would say something, and he did. If we get into this habit in the U.S. Senate, it will not matter what the issue is, it will happen whenever a five-member subcommittee is taking questions from other Members of the Senate. It has never been granted in my time, to either a Member of the minority or the majority. I would prefer not to do that, without being difficult.

Senator SIMON. We did that the other day in the Kozinsky hearing just last week, where Senator Levin was there, was not a member of the Judiciary Committee, and was permitted to ask questions.

Senator SIMPSON. But that was a separate hearing on that one situation only.

Senator SIMON. Yes, and I think that is basically what we have here today.

Senator SIMPSON. Well, I do not see it that way, but——

Senator SIMON. I will abide by your ruling, but my own preference would be to let our colleague ask some questions.

Senator SIMPSON [continuing]. I would ask Senator Humphrey, do you have certain questions you wish to ask?

Senator HUMPHREY. You have put me in an awkward spot, Mr. Chairman.

Senator SIMPSON. Yes, of course.

Senator HUMPHREY. I am cognizant of the special privilege I would be accorded and if permitted, would be especially brief.

Senator SIMPSON. I would meet that request. And understand that we do have rollcall votes; I have a time limitation that is going to come around 5 o'clock. I would like to get to the rest of the material. But I will certainly allow you to do that.

Senator HUMPHREY. Indeed. And I hope the witness will likewise keep his answers as brief as he can.

Mr. Nelson, during the time that Mr. Medvid was once again in our custody, that is, after he had been removed from the ship, he was constantly also in the custody of Soviet officials; is that correct?

Mr. NELSON. Soviet officials were constantly with him when he was removed from the Soviet vessel, but not in their custody. He was clearly under the control of U.S. officials at that time. But there were Soviet representatives present.

Senator HUMPHREY. Yes. Under our custody, but always in the presence of Soviet officials.

Mr. NELSON. That is correct.

Senator HUMPHREY. And that applies also to the moment when he signed the statement indicating his wish to return to the Soviet Union; there was a Soviet official or officials overseeing that signing?

Mr. NELSON. That is correct.

Senator HUMPHREY. Now, you say that an extensive physical exam was conducted on Mr. Medvid. Was a urine test given?

Mr. NELSON. I do not know that there was a urine—I do not know.

Senator HUMPHREY. How about a blood test?

Mr. NELSON. I do not know what tests were given. There was, as I understand, an hour or more physical examination by a U.S. Navy physician and a psychiatric examination by a U.S. Air Force physician.

Senator HUMPHREY. Well, I would like to make the point that I have been in contact with the National Institute on Drug Abuse, which is part of the National Institutes of Health, and they tell me that there is no way you can be sure from any other kind of test except a urinalysis and a blood test whether there are drugs present in the body of someone being examined. So I would like to suggest if those tests were not undertaken that there was not in fact an extensive physical exam, and certainly not one of the kind that was warranted in this case.

Now let me ask you about the lawsuits that have been going on here in Washington. Your Mr. Roger Paul Brandemuehl, who I guess is from the Border Patrol, apparently requested to testify behind closed doors, such that the attorneys representing Mr. Medvid had no opportunity to hear his testimony, nor apparently to rebut it. Why was that request made to provide that testimony behind closed doors?

Mr. NELSON. I will ask Mr. Bombaugh to reply. He was the attorney for the Government present at that time.

Mr. BOMBAUGH. Senator, it was not Mr. Brandemuehl's request; he testified at my request. The request to testify behind closed doors was mine.

Senator HUMPHREY. Why did you make that request?

Mr. BOMBAUGH. It was done because I was directed to do that by responsible officials within the State Department——

Senator HUMPHREY. Who was that, please?

Mr. BOMBAUGH. It was given to me by an officer in the Legal Affairs Office.

Senator HUMPHREY. Mr. Chairman, I find that disgraceful.

Senator SIMPSON. Well, let us just stay calm—we are not a court of inquiry. If we are going to get into some things that have to do with the State Department's position, foreign policy, we can have our vote in here, decide, this subcommittee, on whether to go to executive session. I would like to have it so that the witness can respond without an adversarial atmosphere, if you will proceed.

Mr. BOMBAUGH. Would you like me to complete my answer, Senator?

Senator SIMPSON. I would.

Mr. BOMBAUGH. The reason—there were matters of fact which reflected foreign relations in the judgment of the State Department, and therefore, the request was made that this testimony be given en camera.

After the testimony was solicited, during which time not only did I examine the witness, but the judge examined the witness, Mr. Brandemuehl was shown a statement which contained the summary of what he had testified without any of the material that people

were concerned about because of the sensitivity, which he adopted, having been present with the events unfolded, and that material was attached to the judge's order.

I should inform the court that in view of continuing developments, we have requested that the court of appeals release to the State Department—and I believe that request has been made. I asked that it be made before we came here—that they review the transcript for the purpose of considering declassification. And I do not know where that process stands, but it is certainly our desire to get all the facts before the public that can be——

Senator HUMPHREY. Well, that is commendable——

Senator SIMPSON. May I just say that I will assure you that you will have an opportunity to also question the State Department witness today and have your inquiry on that round.

Senator HUMPHREY. Well, I thank the chairman.

May I simply observe finally—I see my time is about up—that it would appear, according to what this gentleman has just said, that considerations of foreign policy supersede matters of due process and constitutional protection. I find that shocking.

Senator SIMPSON. Is that what you said?

Mr. BOMBAUGH. No, that is not what I said. There was specific factual material that was testified to which people thought was sensitive from a foreign policy standpoint. That was the only consideration.

Senator SIMPSON. Do you have any further questions?

Senator HUMPHREY. No. Thank you, Mr. Chairman.

Senator SIMPSON. I am going to limit the next round to 5 minutes each, and I am going to pass and go to Senator Grassley.

Senator GRASSLEY. On the point just discussed here, is it not possible for the Senators on this committee to hear the entire filmed statement that was given in court?

Senator SIMPSON. That is possible, indeed it is. If the subcommittee would like to make that decision, we can do that. The five of us would meet; we would come back out and announce our vote to go into executive session beyond the record, that we favored that, and then we would hear that testimony. We could hear it in this room, or some other room.

Senator GRASSLEY. As long as it is the chairman's judgment that it is possible——

Senator SIMPSON. Indeed, it is.

Senator GRASSLEY [continuing]. I will wait and discuss that with the chairman and other members of the committee later on.

Mr. Nelson, based on a newspaper report in the Cleveland Plain Dealer of November 4—yesterday—it is stated that Medvid's wrists were slit, but not bad enough to require stitches, implicitly showing that he was not returning voluntarily.

Did U.S. doctors make any report of that being a situation with his body?

Mr. NELSON. I have not seen the medical reports, so I do not know on that. I understood there was some indication of slitting wrists or some bruises there, and he apparently had some kind of arm cast or something. I understand the doctors did say, though, he was alert and in good shape. There had also been some allega-

tion that he had banged his head on the rocks or something, and there apparently was no indication of that.

But I have not seen any medical reports, so I have no indication of those issues.

Senator GRASSLEY. Could you give me the names of the officials who decided that the signed statement by Medvid was sufficient to lead our Government to conclude that this case could be closed?

Mr. NELSON. State Department representative, Mr. Louis Sell; the INS representative was Mr. Brandemuehl, who has been alluded to. I do not know the names of the doctors. They say a Navy physician and an Air Force psychiatrist, whose names I do not know. There were several other State Department officials in the area, but——

Senator GRASSLEY. Could we get the names in writing of who all those people are, and what role they played?

Mr. NELSON. Yes.

[Information follows:]*

Senator GRASSLEY. Mr. Chairman, can I reserve the couple of minutes I have?

Senator SIMPSON. Sure. You bet.

Senator Simon.

Senator SIMON. I will just take one question. I can give this question to you, Mr. Bombaugh: Has this case been handled differently because of the summit meeting coming up?

Mr. BOMBAUGH. I can only speak for myself—no. I do not know what is in the mind of everybody else who represents the United States. Nobody has indicated to me that it had any relationship to the upcoming summit meeting, and I certainly did nothing differently than I would have done if there were no summit meeting.

Senator SIMON. And no one from the State Department said to you, "We had better not mess around here, because we have this summit meeting coming up," and treat this case differently?

Mr. BOMBAUGH. No, Senator.

Senator SIMON. I have no further questions.

Senator SIMPSON. Senator Denton.

Senator DENTON. I did not know about the wrist abrasions or whatever they are, but I can tell you that anyone familiar with the North Vietnamese persuasive efforts would know that the most common form of pain applied—I would say 95 percent of the torture involved very tightly tied ropes around an individual's wrists, followed by various applications of paraphenalia which are designed to cause the individual's blood supply to be cut off to his hands. Without any other rope, you can also, by insertion of a stick through a line formed by the V in his elbows, placed around his knees, with his legs up against his chest, you can force—three or four men can—the arms and legs into such a position that will permit you to poke a sharpened stick through. You then slant the individual up on his tailbone, put his heels on an overturned stool, and if the thing is done right, in about 1 hour, he will go unconscious from the failure of blood to flow through his arms and legs. He will fall over sideways; the stick will be knocked loose, and he will go through the pain of the blood being allowed to go back through his blood vessels in his arms and legs, and then they repeat that until the individual is pliant.

*Not available at press time.

Are you not aware that such persuasive techniques are commonly used by the Communist bloc?

Mr. NELSON. I am aware, Senator, of general things, and certainly your own circumstances and others. I am not aware of the specifics, but I am certainly aware of different methods along those lines.

Senator DENTON. Well, I would have thought—and I do not mean to be adversarial—that being aware of that, it certainly might have occurred to you that the abrasions reported on the man's wrists might have been evidence of coercion which would have caused him to change his story.

I do not understand why we do not have a transcript for the first interview. It would seem that by now, we would know the thing is pretty important as far as documentation.

Do you have any comment to make?

Mr. NELSON. Well, we have taken statements, as I think I have indicated, Senator Denton, of the Border Patrol agents involved, signed statements, sworn statements. I think I have summarized what their comments were on the interpretation of the discussion with Mrs. Padoch.

Senator DENTON. Do you have a list of the questions that Seaman Medvid declined to answer in the second interview—in that I would expect, assuming he was coerced, that he might still have had the presence of mind to try to give signals of some kind about his real intentions. Do you have a list of the questions he refused to answer?

Mr. NELSON. I do not. I do not have those.

Senator DENTON. Thank you, Mr. Chairman.

Senator SIMPSON. Senator Humphrey, do you wish to take 5 additional minutes?

Senator HUMPHREY. Mr. Chairman, you have been very kind, and I will not ask for further hospitality at this point. But I continue an active interest in the proceedings.

Senator SIMPSON. I appreciate that very much.

Senator GRASSLEY. Mr. Chairman, may I take my 2 minutes back?

Senator SIMPSON. You can have more than that. I will go and vote, and——

Senator GRASSLEY. Before you go vote, I would like to get back to the question I just asked you. I would like to have this committee make a decision on receiving that information en camera.

Senator SIMPSON. Then, you may under rule 26 move to, with a second, go into closed session to discuss only those matters described in sections 1 through 6——

Senator GRASSLEY. I would like to do that today at a time that would be permissible to the chairman.

Senator SIMON. If the gentleman would yield, could we do it at the end, after all of our witnesses?

Senator GRASSLEY. Yes, that is all right with me but I want to leave that up to the chairman.

Senator SIMPSON. It is fine with me—with a motion and a second and a discussion, the five of us will sit down and after that determination come forward and, with a rollcall vote, indicate whether we want to go to an executive session.

And if you will please proceed, I think we are ready now, are we not, that we might have the testimony of Dr. Irene Padoch, the Ukranian interpreter of the Immigration and Naturalization Service.

I shall return momentarily, so we can continue the hearing without interruption.

Senator GRASSLEY [presiding]. Ms. Padoch, do you desire to have counsel with you?

Dr. PADOCH. I do not believe it is needed.

Senator GRASSLEY. I would ask that the name of the counsel be given to us at this point, and then we can proceed with your testimony.

Mr. KAMENAR. My name is Paul Kamenar, the executive legal director of the Washington Legal Foundation, and I am one of the attorneys, cocounsel, in the case presently before the court that was alluded to earlier in the hearing.

We were the ones that called Mrs. Padoch to the witness stand on Friday evening before Judge Oberdorfer to give her live testimony to supplement the affidavit, which the committee already has.

Senator GRASSLEY. Mrs. Padoch, would you proceed with your testimony?

STATEMENT OF DR. IRENE PADOCH, UKRAINIAN INTERPRETER, IMMIGRATION AND NATURALIZATION SERVICE

Dr. PADOCH. All right, yes, I am ready.

Senator GRASSLEY. Do you have a statement?

Dr. PADOCH. I have, but the gentlemen, I believe, he took this statement—you took my statement before Immigration in the Catskill Mountains, when I interpreted Medvid. But it was Sunday morning—it was Sunday morning, and first I spoke to him Thursday night. It was 11:45 p.m. when we started. About 1 hour we talked

So this statement was done at 6 o'clock in the morning in the Catskill Mountains, because I have a second house over there.

Mr. KAMENAR. Let me just clarify for the committee, I think the witness is not here for prepared testimony for this hearing. What she is alluding to is that she gave a written interview and testimony to certain INS officials who came to her summer house after Medvid had been put back on the ship, and there was a five-page testimony.

Dr. PADOCH. Yes, right.

Mr. KAMENAR. What you have before you is the three- or four-page affidavit which was executed on November 1, here in Washington, DC.

So I think she would be willing to answer questions as opposed to reading her affidavit again, if you will, or summarizing the testimony she gave to the INS officials—which, by the way, she does not have. She has never been given a copy back of this five-page statement that she gave certain INS officials at her summer house.

Dr. PADOCH. Today, today, here.

Senator GRASSLEY. Mrs. Padoch, I would like to ask a question.

What led you to contact the Border Patrol; and would you describe the attitude of the people that you had contact with about this case.

Dr. PADOCH. I got the telephone call from, I believe it was, I thought that it was from the Immigration Office, because they have my name as the only interpreter for Ukrainian language. And he told me just that he had a man over there to speak with, and that he jumped from the ship, and nobody understands him.

So we started. I asked him, "Do you hear me?" in Ukrainian, and he answered, "Yes, I hear you very well. And I am very happy that I can speak to anybody who understands me."

And further he told, "Can you come here immediately, because I am lost here," or something like this.

Further, this officer—I do not know; I thought it was the officer from Immigration—asked me to ask him how long he has been ashore.

He answered that he cannot state it very accurate how many hours, but he told—that means the officer—"He does not see that I am still wet." And on the question of the officer if it was today, he told, yes, it was today. So it was from Thursday to Friday.

Senator GRASSLEY. Now, you contacted your friend, and——

Dr. PADOCH. Oh. It was a longer talk—when the officer told me "If you will be available during the night," I said, "What do you mean, during the night? Why is it so urgent?" and he told me, "Oh, maybe we will need you at 3 o'clock, or I do not know."

And I said, "When it is necessary, yes."

But he told, "Probably tomorrow, we will ask you."

Later on—the boy several times told me he was very much afraid, and on the question why did he jump, he answered that he liked to live in the honest country.

And I repeated——

Senator GRASSLEY. You did not have any doubt in your mind when he said that he wanted to stay in the United States of America?

Dr. PADOCH. No. He told—he told, "I jump here because I like to live in the honest country."

Senator GRASSLEY. Meaning the United States of America.

Dr. PADOCH. Meaning absolutely, the United States.

And the officer asked me to ask him for particular reasons, and I started to ask him, but he answered, "I cannot in a few minutes explain all of the reasons why I don't like to return to my country."

Senator GRASSLEY. He said that to you just that way——

Dr. PADOCH. That is right.

Senator GRASSLEY [continuing]. That he did not have time to explain all the reasons he did not want to return to the U.S.S.R.?

Dr. PADOCH. That is right. He did not tell "U.S.S.R."; as well, he did not tell this magic word, "asylum." But he absolutely, on my question—because it was the question; it was not my initiative, it was the officer on the end who told me, "Ask him if he is asking for political asylum, because otherwise I cannot keep him here. He cannot stay in the United States."

I asked him, "Do you like to stay here, and are you asking for political asylum?"

He, without any hesitation, stated, "Yes."

And I told this to the officer, and the officer again asked me, "So he stated 'Yes'?" and I told, "Yes."

But later, he told again, "I am very much afraid," and that, "I don't know what would happen to me." I translated that to the officer, and he told me, "Tell him—calm him, and tell him that no harm will be done to him; that he can rest, he can relax, and tomorrow we will proceed. But the boy—I have to keep him arrested." Here was the question. It was that word, "arrested." The officer, I was surprised, because always they tell he will be "detained," because in Immigration they are always detained.

But he told "arrested," and they were very——

Senator GRASSLEY. Up to this time, did you have any reason to believe that he would be returned to the ship?

Dr. PADOCH. Absolutely not. I was sure that the officer was sympathetic to him, and it was not normal procedure. He did not speak under the oath. Nobody asked him if he was part of the Communist Party, or so on.

And he told the name of the ship, everything. There were many, many particulars which are always brought up in these circumstances. And so I thought, "They will proceed tomorrow, everything." But nobody called me.

Senator GRASSLEY. You contacted some of your friends in the New Orleans area.

Dr. PADOCH. Yes, my father's relatives. He lives in—Dr. Alexander Sasjavorsky. And I told them, because they are in Louisiana, not in New Orleans, but in Abbeville, and I told them, "You know, I have to go to upstate New York. Maybe I could give the immigration office your telephone number, because you could help them. And in case they decide that the boy can stay here, maybe you will help him."

Senator GRASSLEY. I am going to have to ask you to stop. I have to go and vote. But when Senator Simpson comes back, you can complete your answer to my question.

We will stand in recess for 5 minutes.

[Short recess.]

Senator SIMPSON. The hearing will come to order, please.

We will come to order, and I really regret having to spring up and down and vote, but we are heavily involved in the deficit reduction issue.

I have reviewed your testimony to this point, and my fine chief counsel and staff director, Dick Day, has reviewed that with me.

If you wish to continue now, Dr. Padoch, I believe we were at the point where you had called your friend, or at whatever point you were, if you would proceed.

Had you finished your statement, Dr. Padoch?

Dr. PADOCH. No. I would like to mention just about the second call. They told me Tuesday—it was only once I spoke to Medvid—but Tuesday, somebody, I do not know who it was, told me that they are together, Medvid and Dr. Helse, the Navy doctor, and one psychiatrist, and I believe, somebody from INS, and some observers from the Soviet Union; together, all together.

And they just asked me if I could give some remarks what kind of impression I got, speaking to Medvid, which means when he was speaking to me—maybe he was not completely normal. Maybe he fell down from the ship. Maybe he was talking too fast, if I did not see anything. I told that I did not see Medvid, but he made an im-

pression that he was completely normal. He always answered to the point, in a clear voice. Only that he mentioned several times that he was very much afraid what will happen to him.

And then the doctor stated—I did not ask anybody, because I did not know this gentleman over there—the doctor told me that, "He is with us here. He suffers total exhaustion." And he told something about his state, that he was very miserable. And in one moment, he told, "We had to interrupt the questioning because of his nausea."

And again, in the beginning, they told me, "Maybe you will speak"—in the beginning, they mentioned, "Maybe we will speak together with Russian interpreter," and he started to talk to me in Russian. But I do not speak very well Russian. There is a big difference between the Ukrainian and the Russian languages. I was brought up in Poland, so I did not know enough Russian. And I asked him to speak English, so he spoke English the whole time.

There was another—the doctor told me that, "The alien does not want to answer the questions when the interpreter questions him." I wanted to suggest, "Maybe I will ask him something," but I didn't, you know. I do not supposed to have any initiative in this matter.

Senator SIMPSON. Now, it is Dr. Padoch, is it not? Is it Dr. Padoch?

Dr. PADOCH. Yes. That means I am a European doctor of law.

Senator SIMPSON. It is Dr. What do you have your doctorate in?

Dr. PADOCH. In Krakow. In Krakow, we have the Jagiellonian University in Poland.

Senator SIMPSON. I see. Do you customarily keep notes on the proceedings that you do translate? Do you do that? Did you keep any notes on this Medvid interview?

Dr. PADOCH. I had a small, very small card, I believe somebody—I do not know if I still have it, or if somebody took it from me. It was just on a small piece of paper. That is when I was spelling the names, it was easier for me to write first and then to spell.

Mr. KAMENAR. Mr. Chairman, in the interim, I may add that——

Senator SIMPSON. Would you for the record—have you stated your name for the record?

Mr. KAMENAR. Yes.

Senator SIMPSON. You have; good.

Mr KAMENAR [continuing]. That Mrs. Padoch here has a copy of a statement that she executed on October 27, 1985, at 7 a.m., before Special Agent Edmund R. B-o-u-c-h-e, Bouche, U.S. Immigration and Naturalization Service. It is a four-page statement, and it is signed by her, and I would like that to be submitted for the record.

Senator SIMPSON. Without objection, it is so ordered.

[Statement follows:]

Soyuzivka Asso
Ukranian National Estate
Kerhonkson, New York

October 27, 1955, 7 AM.

Being duly sworn, I, Irene Podoch, make the following statement before Special Agent Edmund R. Bauke, United States Immigration and Naturalization Service. This statement is made freely and without reservation.

(1) Why did the alien, Myroslaw Medwid, jump ship?

A: Myroslaw Medwid told me that he wanted to live in an honest county. He stated that he could not tell me all the reasons in a few minutes, but that it was for political and moral reasons. He stated that he was very much afraid.

(2) Were you instructed to ask if he wanted political asylum?

A: Yes, the officer told me to ask him if he would like to ask for political asylum.

(3) What was Miroslaw Medwid's answer to that question?

A: He told me without hesitation, that yes he wanted political asylum.

(4) What did the officer state after being informed that the alien wanted political asylum.

A: The officer instructed me to inform the alien that he would be placed under arrest and detained

overnight, and that the Immigration would speak to him more the next day. The officer also told me to tell the boy that he would not be harmed, that he should go to sleep and relax and that tomorrow we will speak again.

(5) What was the reaction of Mirosław Medwid?

A: The boy told me that he was very much concerned and wanted to know why he was arrested. He said that he would not relax, rest rest and that he would stay awake all night and sit in a chair.

(6) Why was the alien afraid to go back to the ship

A: He never stated that why he was afraid to go back to the ship, but he stated he was afraid to go back to USSR.

(7) Did you specifically ask, "do you want to apply for political asylum?

A: The investigator asked me to ask that question, and I did.

(8) Did you contact anyone concerning Mirosław Medwid?

A: Yes, I spoke to Dr. Alexander Sos-Jaworski in Abbeville, Louisiana.

(9) Do you have his telephone number available at this time?

A: No. I'm sorry, but the telephone number is in my home in New York City and not with me at the moment.

(10) Why did you disclose your conversation with Immigration and Medical to anyone?

A: No I did not disclose any conversation that I had with the boy to Dr. Sos-jaworsky. I only called him to ask if I could give the Immigration Service his telephone number so that they could use him as an interpreter and eventually to possibly help the boy. I was going upstate to New York; my phone is disconnected and nobody would be able to contact me. I also told him not to speak to anybody, just wait until he was contacted by Immigration.

(11) How did you do the interpeting. Was it Verbatim or Synopsis?

A: I did not do a Verbatim translation, I told what the boy told me, and I said only what the Investigator said, nothing more.

(12) How did the issue of asylum come about? What did you say and what did the Immigration Officer tell you?

A: The Immigration officer asked me to ask him if he wanted political asylum to stay here and the alien said yes.

I have read the foregoing four page statement and to the best of my recollection it is the truth the whole truth and nothing but the truth. I have initialed each page.

Diane B. Sadley

Edmund R. Banks, Special Agent

Senator SIMPSON. Let me just inquire if you kept notes in connection with your work, and if you did that with Mr. Medvid. Did you keep notes from that conversation?

Dr. PADOCH. Yes.

Senator SIMPSON. I see.

Dr. PADOCH. I found this, because I left this on the table. I went to the Catskill Mountains to my summer house, and this, I found when I came yesterday in the evening from Washington, you see, when I came home. I have some notes.

Senator SIMON. Could you pull that mike a little closer to you, there?

Dr. PADOCH. Yes. So they are my notes, original notes, when I spoke to Medvid.

Senator SIMPSON. I thank you.

How long did your interview with Mr. Medvid last, Doctor, and what were the telephone arrangements—I want to be sure I understand what that was—that enabled you to speak to both the officers of the INS and Mr. Medvid. How did that work?

Dr. PADOCH. I did not speak with Mr. Medvid for the second time; only once I spoke to him.

Senator SIMPSON. The first time.

Dr. PADOCH. But the second time, I just spoke with the Russian interpreter and with the doctor, that is all. Yes—I did not speak to anybody else.

Senator SIMPSON. I am talking about the first time. The first time, how long was that interview?

Dr. PADOCH. It was about 1 hour.

Senator SIMPSON. And in that time, you talked with Mr. Medvid.

Dr. PADOCH. At this time, I talked with Mr. Medvid, who was very happy and asked me to come immediately, he told me.

Senator SIMPSON. And I know it is impossible to describe his condition or state of mind through a phone call, but did he seem excited? You say he was frightened, obviously; you did say that.

Dr. PADOCH. Yes. He mentioned this, and he was still wet, and that nobody understands him, and he was very unhappy when he heard that he will be arrested.

Senator SIMPSON. And what was Mr. Medvid's response when they said they would have to arrest him until morning?

Dr. PADOCH. He just claimed that he was very unhappy, and he does not understand why he should be arrested, because this officer mentioned, "He will stay under arrest"—arrest, not detention even—under arrest. And I was surprised. But I thought maybe this was the safest place.

And I told him, "Don't be worried. Nothing will happen to you, because the officer assured me you can rest, you can relax."

But Medvid told me, "No, I will not relax. I will sit down on this chair until the morning."

And I did not know that somebody sent him to the ship until this officer in the morning, Sunday morning, came to my house—and they did not talk to me, either. They just told me, We know much more than I do about this, in this case.

Senator SIMPSON. Did the statement by the officer about the arrest seem to change Mr. Medvid's mind about returning to the ship?

Dr. PADOCH. You know, I cannot answer this question, because—I am just telling you what I know for sure, speaking to him. And he told me that he speaks Ukrainian, and he has a Ukrainian name. Medvid means "bear" in the Ukrainian language. And his mother is Polish——

Senator SIMPSON. "Bear"?

Dr. PADOCH. "Bear," yes, the animal "bear," and he even mentioned the animal "bear," like animal.

Senator SIMPSON. OK. "Grizzly" we call them around here.

Dr PADOCH. Yes. And his mother is Polish ancestry, and he speaks both languages. He did not mention Russian, he spoke. He is a country boy.

Senator SIMPSON. He spoke Polish and Ukrainian.

Dr. PADOCH. Ukrainian and Polish. First he asked for Ukrainian interpreter.

Senator SIMPSON. How long have you been providing translation services?

Dr. PADOCH. Eight, ten years, I believe.

Senator SIMPSON. And is that how long you have worked on a contract basis with INS?

Dr. PADOCH. Oh, sure. In the beginning, there was more work, because mostly for Polish people. But recently, you know, I am not always in New York. During the summertime, I am in the Catskill Mountains, and sometimes I am going to my children. So I am not very willing to translate.

Senator SIMPSON. So then, how often are you called upon to——

Dr. PADOCH. Last year, only once.

Senator SIMPSON. And are you under contract? In other words, when you do this——

Dr. PADOCH. Under contract. They pay me only for my hours.

Senator SIMPSON. You are paid by the hour?

Dr. PADOCH. By the hour.

Senator SIMPSON. But you have been called upon only one time in the past year?

Dr. PADOCH. In the past year, yes.

Senator SIMPSON. I see. And was that with a Polish interpretation or a Ukrainian interpretation when you were called upon?

Dr. PADOCH. It was, I believe, Polish—maybe twice—I do not recall. I cannot tell for sure. Probably Polish interpretation.

Senator SIMPSON. Well, one final question, then, within my time. During that second conversation, you indicated you spoke to a doctor and a Russian interpreter.

Dr. PADOCH. Yes.

Senator SIMPSON. Would you recount briefly that conversation; what was that, with the Russian?

Dr. PADOCH. He started to speak Russian to me, and I did not understand what he talked, and I asked him to speak Ukrainian. So the whole time almost, he was questioning me, I believe, this Russian interpreter.

Senator SIMPSON. What was he asking?

Dr. PADOCH. He was more informing me than asking me for anything. They told me that now he decided to go back to the Soviet Union. But the doctor, after this statement, told me that, "He suffers total exhaustion," and so on, as I spoke before.

Senator SIMPSON. What else did he say; anything else?

Dr. PADOCH. I believe that somebody told that the case is closed, or something. I believe somebody told that.

Senator SIMPSON. So it may have been a little difficult to understand what else was said?

Dr. PADOCH. No. They just informed me that he decided to return to the Soviet Union.

Senator SIMPSON. Well, my time is expired, and I will go now to Senator Grassley. Thank you, Dr. Padoch.

Senator GRASSLEY. I have no further questions, Mr. Chairman.

Senator SIMPSON. Paul. I did not know Senator Grassley had already asked questions. We do not surprise each other much. He sticks with me on all these things, as this subcommittee does.

Paul.

Senator SIMON. First of all, Mrs. Padoch, I want to commend you for standing up and saying what happened. It would have been a very easy thing for you not to say anything. And we are very proud of you for having said it.

Dr. PADOCH. In the beginning, I did not like to talk about it. But then the people told me, "Why don't you speak freely, and the truth." Immigration told me, "It is up to you if you would like to speak or not. But it may be better when you send everybody your statement." And in the beginning, when I spoke to anybody, I asked them to take my statement, because they are ready to release my statement.

Later on, from New York Times, from Washington Post, they told me that Mr. Austin refused to release my statement. So I started to talk.

Senator SIMON. Well, we are grateful to you.

You mentioned talking to the Russian interpreter and the doctor.

Dr. PADOCH. Yes.

Senator SIMON. Did the Russian interpreter indicate whether the Soviet sailor was fluent in Russian?

Dr. PADOCH. No, he did not tell about this, but the doctor—I forgot to mention this—said "He does not want to answer the questions when the interpreter asks him"—not all, but he did not like to answer some questions.

Senator SIMON. This is from the interpreter?

Dr. PADOCH. Not the interpreter told me this, but the doctor, the Navy doctor told me.

Senator SIMON. Right. And then one final—but there is at least a possibility that we are talking about a man's third langauge——

Dr. PADOCH. Yes.

Senator SIMON [continuing]. That he did not speak Russian fluently.

Dr. PADOCH. There are a lot of Ukrainians from this part, which were before World War II under the Polish rule, especially a little bit all the people, but the same, when the children were home, and they speak only Ukrainian at home; where the Polish, they spoke—I believe they learn the Russian language in school. But in the villages, they did not speak very well.

Senator SIMON. So that part of the difficulty in this second interview could be language.

Dr. PADOCH. Yes, it could be. Not only this, but as you know how it is in Poland, they do not believe everybody who speaks Russian. So I do not know if it happened in this case, but I think that maybe he did not have full confidence to this man.

Senator SIMON. Then, one final question. It has been said that the telephone connection was not good with this one Immigration and Naturalization officer.

Dr. PADOCH. True, that is true.

Senator SIMON. There was no question in your mind at all that he was seeking asylum; is that correct?

Dr. PADOCH. No, not from when he was talking. I understand, this line was very good. But the other phone, with the officer—and I believe between "Yes" and "No"—although he mentioned that I have a heavy accent, and I understand this—but between "Yes" and "No" is such a big difference that I do not believe he could not understand.

Senator SIMON. All right. I agree there is a big difference between "Yes" and "No." [Laughter.]

Senator SIMON. But in your own mind—just you, forgetting this other officer, now—in your own mind, there is absolutely no question that he wished to seek asylum in this country; is that correct?

Dr. PADOCH. Absolutely.

Senator SIMON. OK. Then, second——

Dr. PADOCH. In the beginning, he told that he liked to live in the honest country. Everything indicated that he was afraid to go back. It was one after the other; the impression was absolutely, he wanted to stay, to stay here in the United States.

Senator SIMON [continuing]. Can you understand that the Immigration officer could get a different impression? How could the man, listening to your conversation——

Dr. PADOCH. It was not the Immigration officer. I believe it was the Coastal Guard, probably. I was in the impression that it was Immigration officer, but somebody told me it was the Coastal Guard.

Senator SIMON [continuing]. But the third person—you and the Soviet sailor, Medvid, were talking.

Dr. PADOCH. Yes.

Senator SIMON. And then this third person was listening. As far as you know, there is no way he could have interpreted that any other way than that the man wanted asylum?

Dr. PADOCH. You know, maybe he was asleep, sleeping, or something. [Laughter.]

Dr. PADOCH. No, no, because he was speaking in such a voice, and a little bit—and he was sympathetic, really, but in the end, it was, "Please ask him if—"—it was a little bit impatient.

"For so long"—it had been about 40 minutes—"you have been talking to him, and he does not answer this in this way"—that means according to the rules, because the rule is he has to ask for political asylum. And he did not express himself this way. You know, he was a boy from the village, and he did not know this magic formula that he had to ask——

Senator SIMON. Until you asked the question.

Dr. PADOCH [continuing]. Until I asked the question. And I emphasized political asylum. It is not so very far from—because in

Ukraine, it is "politischne azyle", so it is not so far that he even could hear me that I am asking him for political asylum.

Senator SIMON. OK. I thank you very, very much, Dr. Padoch.

Thank you, Mr. Chairman.

Senator SIMPSON. Senator Denton.

Senator DENTON. Mrs. Padoch, I have read your affidavit, and I just want you to know that I believe everything you have said I admire very much your courage in speaking out about this matter.

I am confused about some of the reports I have read in the newspapers regarding alleged conflicts in what you have told them was said in the first interview.

I am quoting from The Washington Times, page A1, November 1, 1985, headline, "Seaman Wanted to Stay, Interpreter Says." It says in the paragraph, "Mrs. Padoch said that the U.S. officers in New Orleans told her to ask him if he wanted asylum. When she asked that question, he first did not give an answer. When she asked again, the man became petrified and said 'No' several times."

I know that you do not agree with that statement——

Dr. PADOCH. Absolutely not.

Senator DENTON [continuing]. But do you have any idea where they got that version of what you told them?

Dr. PADOCH. Absolutely, I do not know, because it was without any hesitation, he answered, at once, and I asked not asylum but political asylum.

Senator DENTON. And did you just tell Senator Simon that the first interview, the interview about which you submitted the affidavit, involved you, Seaman Medvid, and a Coast Guard officer, to your knowledge, rather than an INS officer?

Dr. PADOCH. Somebody told me that it was, I believe from Immigration, that it was the Coastal Guard.

Senator DENTON. "Coastal Guard"?

Dr. PADOCH. Yes.

Senator DENTON. Is there any possibility that there might be some other service or agency involved that might have——

Dr. PADOCH. No, because only Immigration has my name as Ukrainian and Polish interpreter.

Senator DENTON. Well, INS is referred to in the newspapers as saying that you did not tell them in that telephone conversation, or as a result of that telephone conversation—one or the other—that the man wanted to seek asylum. So do you know when the INS started disagreeing with you? When did they——

Dr. PADOCH. No. When they came to me in the Catskill Mountains, they agreed completely. They just told that, "Somebody goofed." It was that that they expressed over there.

And I have the name of the man who spoke to me.

Senator DENTON. What was his name?

Dr. PADOCH. His name was Ernest S-p-u-r-l-o-c-k.

Senator DENTON. Ernest Spurlock.

Dr. PADOCH. That is right.

Senator DENTON. And no indication of what agency or service he belongs to?

Dr. PADOCH. Oh, I believe—I thought that——

Senator DENTON. You thought it was the INS.

Dr. PADOCH. Or that it was somebody else; it was the man from Immigration in New York.

Senator DENTON. It is not the name of the gentleman you think you spoke with on the phone, the third person besides Medvid and you?

Dr. PADOCH. Who?

Senator DENTON. Ernest Spurlock. Is he the third?

Dr. PADOCH. He was the man who spoke with me and——

Senator DENTON. And Medvid?

Dr. PADOCH [continuing]. And Medvid, yes.

Senator DENTON. Well, when did you first learn that the INS were saying that you had not indicated to them that the man sought asylum?

Dr. PADOCH. They never told me this. I read this in the newspaper.

Senator DENTON. You did refer in your affidavit, as you mentioned, and I am quoting from you, "One of the agents told me that 'Somebody goofed' and that he should jump into the Mississippi himself."

Dr. PADOCH. Right. It was like a joke, because it was more agents together; they looked for my house. They did not know my address. So that is the reason there were several persons.

Senator DENTON. What "goof" was he referring to? Was it the "goof" of ruling that the seaman should return?

Dr. PADOCH. No; they were talking among themselves, and they just said, "Somebody goofed, and he really should jump into the Mississippi River."

Senator DENTON. But they were referring to the man having been returned to the ship after seeking asylum?

Dr. PADOCH. That is right, that is right.

Senator DENTON. Well, thank you.

Dr. PADOCH. I did not know that he was already on the ship, but they told me that they know much more than I do, but they did not inform me.

Senator DENTON. Is there any problem with the difference between Ukrainian and Russian? I took Russian for 3 years. In those days, there were 72 different dialects of Russian alone. But my roommate in the Naval Academy became familiar with all 72, so it is possible. But do you think there was any miscommunication between you and him because of your speaking in your Ukrainian——

Dr. PADOCH. Because of language.

Senator DENTON. Yes, with Russian being his language and Ukrainian being yours; or no, that is probably not correct?

Dr. PADOCH. I do not believe—maybe. But you know, when somebody will ask me—and I was living in the same region as he is—and if anybody will speak Russian to me, I could not understand them.

Senator DENTON. But you understood everything he said, and he understood everything you said?

Dr. PADOCH. No, no. I understand everything that Medvid said to me in Ukrainian perfectly, perfectly.

Senator DENTON. Perfectly.

Dr. PADOCH. And he was speaking really Ukrainian. The only Russian word was "Da" instead of "Tak," which is like Polish.

But he absolutely spoke—and he asked for the Ukrainian interpreter. But how is his knowledge of the Russian language, I do not know how perfect it is.

Senator DENTON. But his Ukrainian was OK?

Dr. PADOCH. Yes, his Ukrainian was perfect.

Senator DENTON. Thank you, Dr. Padoch.

Dr. PADOCH. And he told that he speaks Polish, too.

Senator DENTON. Thank you, Mr. Chairman.

Senator SIMPSON. Thank you very much, Dr. Padoch. We appreciate that.

I have a panel here. Did you have something——

Mr KAMENAR. This is just a statement that Mrs. Padoch had signed on October 27, that we want to submit for the record.

Senator SIMPSON. I already did that. Oh, is this another—a different statement?

Dr. PADOCH. This is the one I gave.

Mr. KAMENAR. That she gave counsel, and had not been in the record.

Dr. PADOCH. The other one.

Mr. KAMENAR. But we will submit that now. I just wanted to note that the Government attorneys tried to keep Mrs. Padoch from testifying at the court hearing as well, and we objected.

Senator SIMPSON. Do you represent Dr. Padoch?

Mr. KAMENAR. She asked me at this hearing just now——

Senator SIMPSON. Today.

Mr. KAMENAR [continuing]. To accompany her as counsel. I am the cocounsel in the case, and we called her as our witness.

Senator SIMPSON. Well, I think the record has to indicate you are in an adversarial position against the U.S. Government in spades; isn't that correct?

Mr. KAMENAR. That is correct.

Senator SIMPSON. OK. I wanted to just have that. She is here to testify and give us her knowledge of what happened, and I just want that clearly reflected.

Senator GRASSLEY. Mr. Chairman, I think the record should also reflect that I invited Dr. Padoch counsel.

Senator SIMPSON. I have no problem with that. I just like to keep the cast in perspective. That is what I would like.

Senator HUMPHREY. Mr. Chairman.

Senator SIMPSON. Yes.

Senator HUMPHREY. May I beg your indulgence to offer a few observations——

Senator SIMPSON. I have a State Department witness I know that you will want to ask questions of. That State Department witness says he has a meeting to get to, and he has asked to go first on the next panel.

If you have one or two questions, I will certainly accept that, if you wish to do that.

Senator HUMPHREY. Two.

Senator SIMPSON. All right.

Senator HUMPHREY. Very quickly, Mrs. Padoch, would you decribe Mr. Medvid as a sophisticated young man, or unsophisticated, or in-between? How would you describe him?

Dr. PADOCH. Absolutely unsophisticated.

Senator HUMPHREY. Unsophisticated.

Dr. PADOCH. Unsophisticated.

Senator HUMPHREY. That is good. Now what about his education—was he well-educated, has only a minimal education—what is your impression?

Dr. PADOCH. Nobody asked him about this. But he told us that he is a crewman—not that he was a crewman—that he worked on the ship as electric, mechanical.

Senator HUMPHREY. So as an electrical technician——

Dr. PADOCH. Technician, that is right.

Senator HUMPHREY [continuing]. And as someone you describe as unsophisticated, would it be fair to assume that he was a young man who did not fully comprehend all of the ramifications of the process and all that was going on about him?

Dr. PADOCH. Yes, I believe so.

Senator HUMPHREY. That is a fair assumption?

Dr. PADOCH. Yes, yes. A fair assumption.

Senator HUMPHREY. Thank you, Mr. Chairman.

Senator SIMPSON. Thank you, Senator Humphrey, and thank you very much, doctor. You have been very helpful.

Mr. KAMENAR. Mr. Chairman, do you have the copy of that statement, the handwritten statement, the one I just had here a minute ago that I said we are submitting for the record?

Senator SIMPSON. There it is, and you may have the original——

Mr. KAMENAR. No, that is not the statement. There is a handwritten statement that I read.

Senator SIMPSON. Yes, and I believe you have put that into the record and we accepted it. We will get you the original, and we need a copy to go into the record.

Thank you so much.

Senator SIMPSON. And now the final panel of William Woessner, Principal Deputy Assistant Secretary of State for European and Canadian Affairs, Department of State; J. Robert Grimes, Regional Commissioner, South Central Region, U.S. Customs Service, and Rear Admiral Donald C. Thompson, Chief of Staff of the U.S. Coast Guard.

Thank you for your presence. Let me have Mr. Woessner go forward, please, and we will hear his testimony.

STATEMENT OF A PANEL, INCLUDING WILLIAM M. WOESSNER, PRINCIPAL DEPUTY ASSISTANT SECRETARY OF STATE, EUROPEAN AND CANADIAN AFFAIRS, DEPARTMENT OF STATE, ACCOMPANIED BY JIM HERGEN, ASSISTANT LEGAL ADVISER FOR CONSULAR AFFAIRS; J. ROBERT GRIMES, REGIONAL COMMISSIONER, SOUTH CENTRAL REGION, U.S. CUSTOMS SERVICE; AND REAR ADMIRAL DONALD C. THOMPSON, CHIEF OF STAFF, U.S. COAST GUARD

Mr. WOESSNER. Mr. Chairman, thank you.

Mr. Chairman, members of the committee, I am pleased to have the opportunity to testify today about the role of the State Department in the case of Soviet Seaman Miroslav Medvid.

Now, before I describe in detail the role we played in this case, I would like to underscore three basic points.

First, from the moment we were informed of this case, our objective was clear and straightforward. It was to remove Seaman Medvid from the Soviet ship in order to interview him in a neutral, nonthreatening environment, under our control, to determine whether or not he wished to remain here or to return to the Soviet Union.

The operating assumption of the Department of State, the Department of Justice and the White House was that Seaman Medvid's behavior in jumping from his ship and his resistance to being returned to it constituted presumptive evidence of his strong desire to remain in the United States.

Second, that decisions taken in this case, including the final decision to permit Seaman Medvid to sign a statement and to return to his ship, were made at the highest levels of the White House, the Department of State and the Department of Justice.

And third, that it is and will continue to be the general policy of the U.S. Government not to force individuals to return to a country where they would be persecuted on account of race, religion, ethnic origin, membership in a particular social group, or political opinion. This principle remained fully operative throughout our involvement in the case of Seaman Medvid.

Now, the role of the State Department. At 3:40 p.m. on Friday, October 25, when we were first informed of this case by the Border Patrol Section of the Immigration and Naturalization Service, the State Department immediately requested the U.S. Coast Guard and the Treasury Department to take steps to prevent the departure of the *M.V. Konev* from the Belle Chasse area of the port of New Orleans.

We also immediately dispatched a Russian-speaking Foreign Service Officer and an Assistant Legal Advisor to the scene.

The State Department representative arrived in New Orleans and boarded the *M.V. Konev* at approximately 10:30 that evening. From then on, the United States had a team of at least six officials aboard the Soviet vessel at all times until Seamen Medvid was transferred to the U.S. Coast Guard Cutter *Salvia* on October 28.

This team included representatives of the Department of State, the Immigration and Naturalization Service, the Treasury Department, that is, the Customs Service, and a U.S. Navy doctor.

From the evening of October 26, an expert interpreter retained by the Department of State was also on the scene to ensure that there would be no difficulty in communicating with Seaman Medvid. Of Ukrainian heritage himself, this interpreter was fluent in both Russian and Ukrainian and was able to communicate with Seaman Medvid in both languages.

Now, prior to our arrival on the scene, INS officials had observed Seaman Medvid on the *M.V. Konev* during the afternoon of Friday, October 25, and they reported that he was in bed and appeared to be sedated.

The Department of State representative first saw Seaman Medvid on Saturday, October 26, at approximately 3 in the afternoon. The U.S. Navy doctor conducted a preliminary physical examination and reported that Seaman Medvid was alert and that he appeared to be in generally good condition; he did not appear at that time to be sedated or under the influence of drugs.

During that examination Seaman Medvid told the State Department representative that he wished to return to the Soviet Union and he asked whether we had any questions for him. Our representative replied that we would reserve our questions until we could arrange a formal interview off the Soviet vessel.

From the start, we made clear to the Soviets that Seaman Medvid had to be removed from the Soviet ship to be interviewed in a nonthreatening environment under our control. In diplomatic discussions with the Soviet Embassy, we made clear that if Soviet officials did not agree to this demand, we were prepared to remove Seaman Medvid from the *Konev* by force if necessary.

As a result of these diplomatic exchanges, it was agreed that Seaman Medvid would be transferred from the *M.V. Konev* to the U.S. Coast Guard cutter, *Salvia,* for an interview in an environment where he would be free from coercion. The transfer occurred without incident at approximately 4:30 p.m. on Monday, October 28, after Hurricane Juan, which was passing over the New Orleans area, had abated. Upon arrival on the *Salvia,* Seaman Medvid was offered some refreshment and an opportunity to rest or relax, which he declined.

The interview was conducted by a State Department representative in the ward room of the *Salvia.* Also present were a U.S. Navy medical doctor, an INS official, our interpreter, and four Soviets: two officials from the Soviet Embassy, a Soviet doctor and the Master of the *M.V. Konev.*

We allow the Soviet presence during such interviews in order to ensure that our rights to similar access to Americans in the Soviet Union are respected.

However, the meeting was structured so that at no time were the Soviets present allowed to intimidate Seaman Medvid. At the meeting only one Soviet representative was allowed to speak, and then only at the start and at the end of the interview. He was not allowed to interrupt while the State Department interviewer questioned Seaman Medvid, or while Seaman Medvid responded.

Not present during the interview but aboard the Coast Guard cutter to assist if required were two additional Department of State representatives, including an Assistant Legal Advisor and also a U.S. Air Force psychiatrist and representatives from INS, the Border Patrol, and the U.S. Customs Service. The interview was conducted through the U.S. interpreter in both Russian and English.

Shortly after the interview began, however, Seaman Medvid said he felt nauseous, and he asked to go outside for some fresh air. At that time, the sea was still rough as a result of Hurricane Juan, and the Coast Guard vessel was rolling as a result of the turbulent waters. Seaman Medvid was escorted to the deck and was attended to by the U.S. Navy medical doctor who recommended that he lie down in the ship's sickbay. The Soviet medical doctor was present

as an observer but did not participate in his treatment. After approximately a half-hour, Seaman Medvid indicated that he was prepared to resume the interview, and the U.S. doctor concurred that there was no medical impediment to continuing the interview.

When the interview resumed, Seaman Medvid was repeatedly assured by the Department of State interviewer that he was not under arrest, that he was free to remain in the United States, that he was free to depart immediately with the U.S. representatives, and that he would not have to return to his ship or to the Soviet Union against his will.

He was also questioned extensively about the events of the preceding days, particularly why he first jumped from the *M.V. Konev* and what had happened when he was returned to the ship. These questions were gone over and over. Seaman Medvid replied that he had fallen overboard while making some electrical repairs on the ship and that he could recall almost nothing from that time until he woke up in the sickbay of the Soviet ship.

He repeatedly stated that he wanted to return to the Soviet Union. Nevertheless, because we wanted to be absolutely certain that Seaman Medvid understood that he had a clear choice, and considering his nausea earlier that evening, the Department of State in Washington decided that Seaman Medvid should be given an opportunity to get a good night's sleep on shore. A nearby U.S. Government military facility was selected for this purpose.

Seaman Medvid was given supper on the Coast Guard cutter and at approximately 11:15 p.m. on October 28, he and the accompanying United States and Soviet representatives were transferred to a nearby Naval Support Facility, traveling first by launch and then by motor vehicle. During that trip he—that is, Medvid—commented that Soviet cars were better than the Cadillac that was transporting him. Following his arrival at the naval facility, he was given a thorough physical examination by the U.S. Navy medical doctor which lasted approximately 45 minutes, and a psychological evaluation by a U.S. Air Force psychiatrist which lasted approximately 1 hour. The medical doctor determined at that time that Seaman Medvid did not appear to be under the influence of drugs. The Soviet doctor was allowed to observe, but did not participate in these examinations.

Seaman Medvid was housed overnight in a comfortable suite in the bachelor officers quarters. No more than one Soviet representative was allowed in the living room area outside his bedroom, and then only when an American was present.

The other Soviet representatives were quartered in a separate room at the BOQ. Before going to sleep and again in the morning, Seaman Medvid relaxed by watching TV. He was especially interested in watching TV coverage of himself.

In conversations with the State Department representative that evening and again the next morning, Seaman Medvid kept up a steady stream of informal conversation, and he frequently opined that things in the Soviet Union were better than in the United States. He also repeatedly expressed his desire to return to the Soviet Union.

At approximately 1 a.m. on October 29, he went to his room where he slept until around 8 a.m. the next morning. After break-

fast, Seaman Medvid participated in an extended interview with a U.S. Air Force psychiatrist. The Soviet doctor was present only as an observer. Through extensive questioning, the psychiatrist determined that Seaman Medvid was alert, capable of doing calculations, and in touch with reality. He did not appear to be sedated or under the influence of drugs.

At one point, Seaman Medvid strongly objected to questions by the U.S. psychiatrist which he interpreted as implying that he might not be in control of his faculties. The U.S. psychiatrist determined that Seaman Medvid was capable of making important decisions about his future.

Following this examination, Seaman Medvid continued to watch television and converse informally with the American and Soviet representatives present.

At approximately noon on October 29, the U.S. representatives reconvened the interview with Seaman Medvid. The U.S. interviewer questioned him extensively concerning his wishes and assured him he would not be subject to prosecution or forced to return to the custody of Soviet authorities against his will. If he chose, he could leave immediately with U.S. authorities. He was alert, and was determined by U.S. medical, legal, and other representatives to be competent to make a decision concerning whether he wanted to remain in the United States. During the final interview, Seaman Medvid reaffirmed his repeated statements that he wished to return to the Soviet Union. He specifically expressed his desire to return home to see his mother and father. On instruction, the U.S. representatives then adjourned the interview to seek advice from Washington.

At 3:45 p.m. on October 29, the White House, the Department of State, the Department of Justice and INS instructed the U.S. representatives to reconvene the interview and to tell Seaman Medvid that he would be allowed to return to the Soviet ship as he had repeatedly requested. Seaman Medvid was asked to sign a statement in Russian and English, confirming his wishes, and his understanding that he would be free to leave with U.S. representatives immediately if he chose to do so.

He went over the text of the statement that he was asked to sign, insisted on a few minor changes, and then signed it. The Department of State representative then accompanied Seaman Medvid and the Soviet representative to the *M.V. Konev* in accordance with Seaman Medvid's wishes, where he was greeted with cheers by the Soviet crew.

In conclusion, I would like to underscore the fact that at every point in the Department of State's involvement in this case, our paramount concern was the welfare of Seaman Medvid. We were determined to ensure that he had an opportunity freely to express his preferences. Over a period of days, extraordinary measures were taken to ensure that he was given that opportunity, first aboard the U.S. Coast Guard cutter and then again at the U.S. naval facility after he had had a good night's rest.

From the start, there was always the possibility that Seaman Medvid might indicate that he wished to return to the ship and to the U.S.S.R., and that if he did so, we would have to respect that choice. In our questioning of Seaman Medvid, he repeatedly ex-

pressed his desire to return to the U.S.S.R., and there was no doubt on the part of the U.S. medical doctors who examined him about his ability to make such a decision.

All officials involved in the case, both in Washington and New Orleans, concurred that the United States should allow Seaman Medvid to return to the Soviet ship.

I thank you.

Senator DENTON [presiding]. Senator Simpson has turned the chair over to me since Senator Grassley, who has now returned is senior to me on the subcommittee, I will turn the chair to him.

Senator GRASSLEY. OK. Because Senator Simon must leave, he will ask one question before we go on to other witnesses.

Senator Simon.

Senator SIMON. We, unfortunately, have a Democratic caucus on, and I am going to have to get over there.

Mr. Woessner, there is obviously great concern, and we have these conflicting—your statement and the other statements obviously are in conflict. And we have people of very diverse backgrounds. When you can get Senator Humphrey, Senator Denton, and Paul Simon on the same side on an issue, well, you know there is a pretty broad spectrum of concern here.

You have ethnic groups—you have the ACLU, you have the AFL-CIO. Is it possible that while that ship is still in American waters now, without creating an international incident, that we could work it out to have that Soviet sailor removed and work out with the Soviets turning him over to Swiss authorities or someone else?

You have heard the question asked here before.

Mr. WOESSNER. Yes. Considering the lengthy back and forth we went through with the Soviets to get them to agree to the first interview, considering the elaborate precautions that were taken in that interview and the way it was conducted, I would imagine that that would not produce an outcome any different than what we already have.

But as to the legalities of whether or not we could stop it, whether or not we should stop it, I must say they are beyond my competence. I would have to ask legal advice. But I would imagine the outcome would——

Senator SIMON. Since you mention in your statement that, "The decisions in this case were made at the highest levels of the White House, the Department of State and the Department of Justice"——

Mr. WOESSNER. Yes. It was a very considered judgment in that.

Senator SIMON [continuing]. Right—it seems to me that those same people who made that original decision ought to be involved in some very rapid decisionmaking right now. And I think I express the sense and the sentiment of the Members of both sides of the aisle here that we do not want to cause any unnecessary friction between the United States and the Soviet Union; we do not want to create an international incident, but we do want to see that the rights of Mr. Medvid are protected. And there is concern right now whether they are being protected adequately. And if you can convey that to those in the State Department and the White

House and the Justice Department, I personally would appreciate it.

Senator GRASSLEY. Is there anybody available who could answer that very important question for Senator Simon before he leaves?

Mr. WOESSNER. To the legal question—but I certainly will convey your strong views back to those people.

Mr. HERGEN. Senator, my name is Jim Hergen, and I am from the Legal Advisor's Office, Department of State. I was present at the Department throughout most of this incident. And I want to say that listening to this hearing today, I want to reassure you personally for whatever it is worth that the State Department and all the individuals involved in this from start to finish at the high levels of Government never, ever considered anything but Seaman Medvid's personal best interest and his voluntariness.

I do not know—legally, yes, we have the authority, legally, if we believe that Seaman Medvid is being presently detained involuntarily, we have the authority certainly to request his further detention here.

However, Senator, you must understand that we have already made the voluntariness decision after these extensive interviews, and legally, I would be curious or concerned to know exactly what further you would have in mind by way of voluntariness interviews.

For example, we have had the psychiatric testimony, we have had the interviews by the interpreters. We have had all this—it would amount to now doing something that we believe would be against the seaman's will, in other words, taking him once more from the vessel.

Senator SIMON. Well, there are a lot of questions that have not been answered yet. For example, was there urinalysis——

Mr. HERGEN. No, sir; there was not.

Mr. WOESSNER. There was not.

Senator SIMON. There was not. All right.

Was he under any kind of threats to his family or anyone else before he came aboard for that second interview?

Mr. HERGEN. According to him, he was not.

Senator SIMON. Pardon?

Mr. HERGEN. According to him, he was not, to the best of my knowledge.

Senator SIMON. According to him, he was not, yes, but obviously he is in a very precarious situation.

Mr. HERGEN. We understand that, Senator. We certainly did understand the concerns that you have right now and that all the other Senators have.

Senator SIMON. I guess I really want to convey to the powers that be that there is a strong feeling out there that we are just uncertain whether this fellow is getting the kind of decent break he ought to be getting.

Mr. HERGEN. If I could, you know, this is some country, and we must have spent millions and millions of dollars— I personally have not been to sleep practically for the last week and a half, worrying about this seaman. Senator Denton asked the question about military men. Gosh, I have had 10 years of active military service, and Seaman Medvid was in the custody of all kinds of U.S. military

forces. We have spent literally, probably, millions of dollars, and thousands of manhours trying to do what was right, because we shared the concerns that you are expressing here.

It is a question, ultimately, of judgment. Sure, could we take this man and rip him off the vessel and put him in a mental hospital for a 3-week evaluation? I suppose legally, we might be able to do that. But do we want to do that? Is that the way we behave? No.

Senator SIMON. And no one here is suggesting that, not a one of us. We simply want to take whatever precautions to make sure. And if it means turning him over to Swiss authorities for 3 or 4 days for their evaluation on top of whatever you are doing, let us do it. But let us be careful that we are not violating the rights of this seaman.

And I have to say while your story—I have no reason to doubt anything you say. I have to balance that against here is a fellow who jumped into the Mississippi twice; who was under sedation; who was told in this interview about six times that he wanted asylum, and then all of a sudden you have this completely opposite——

Mr. WOESSNER. May I address that point, Senator, and also come back to Senator Denton's very impassioned question and intervention before. There was no way that the people who interviewed him on the Monday and the Tuesday could have established one way or another what was first in his mind when he first left that ship. As I say, the presumptive evidence is that he wanted to come over, he wanted to seek asylum.

We were confronted with a different situation, and that is, he had gone back or was forced back, and was now in a neutral, nonthreatening environment. And the question was to enable him, to give him the right to make a free choice.

Now, you talk about intimidation. There is no way to know what factors were at work in his mind, what threats may have been made to him or to his family. We can assume those things, but——

Senator GRASSLEY. Was the environment that you talk about, neutral and nonthreatening, nonthreatening with the presence of so many Russian people with him on what you say is neutral ground? Do you consider that a nonthreatening environment?

Mr. WOESSNER [continuing]. Well, let me explain a bit. Nonthreatening in the sense that it was on a U.S. Coast Guard vessel, and the following day was in a U.S. military facility at one point; and second, that there were ground rules laid down, as I explained in my testimony, as to what they could and could not do. And, as Senator Humphrey mentioned, the presence of the Soviets.

There is an important reason, and I alluded to it in my testimony, why they were there, and that is that we insist on reciprocal treatment where Americans would be concerned—our right to have consular access to Americans who may be in Soviet custody. And therefore, it was very important that Soviets be present and could assure themselves that we had given the seaman every opportunity to express his own free will.

Senator GRASSLEY. Because the Senator from Alabama has an obligation, I would like to have him ask questions at this point before we go to the other two witnesses.

Senator DENTON. Thank you, Mr. Chairman.

I would like to welcome you, Secretary Woessner, and express my gratitude for your hospitality in Bonn and convey my respect for the Department, which I have always defended when people told me that the Department of State is this or that, or wrong about this or that. I must say I am undergoing a remarkable transition today in my own mind.

You gentlemen have expressed over and over again a great emphasis on your concern for Medvid's well-being, how there were Americans here and Americans there, and how, after he got back from the ship the first time and so on—the Russians agreeing that he could go to the Coast Guard cutter *Salvia,* only one Russian was allowed to speak to him, and that they never threatened him in any way.

I have got about 38 instances here of your expressions about psychiatrists saying he did not appear to be on drugs and that sort of thing. I assure you that I could get 300 men who have experienced the intimidation and ask them the question: The man jumps ship, gets ashore; what is he going to say the next time he gets off the ship? Is he going to change his story, and why? They will all give you the same answer that I am giving you.

I am not talking from some unique position of eminence in terms of knowledge or presumption. I am just telling you that anyone who has been in that environment and experienced the situation which that gentleman would, by all logic, have experienced, would give you the same answer. They would say you are overlooking the obvious, that the man was intimidated after he got back aboard the ship and had been found guilty, culpable in their view, of desertion, trying to flee to America, and creating a terrible reflection on them. The Soviets could intimidate him any number of ways—threats to his family, the fact that I learned about abrasions on his wrist, and I offered my suggestion on that, which I think is highly circumstantially probable, or probable from circumstantial evidence. So I just have a great deal of impatience about the overlooking of the obvious fact that the man would have been intimidated.

I can assure you that to us—I am talking about people who have been through this, and you would be of the same opinion as I, if you went through it—that coercion was used is obvious, especially after he told the woman—and I believe the woman—that he was very much afraid and wanted to know what would happen to him. He said that he had a lot of reasons for not wanting to go back to Russia. "And when the INS officer became impatient and asked me," she said, "to ask him whether he wanted political asylum, he unhesitatingly responded 'Yes'." After that, and after he gets back on the Russian ship and comes off, you find it worth mentioning that he said, "This Cadillac is not as good as cars in the Soviet Union." That is laughable. Of course, he is trying to do what they want him to do. He is trying to show that he is proud of the Soviet Union. Don't you know that?

Mr. WOESSNER. Precisely, precisely.

Senator DENTON. He is saying that "Things in the U.S.S.R. are much better than they are in the United States."

To me, you do not have to give him a polygraph—which I wish you would; I wish you would give him a polygraph now and do the interview over again, and then see where all this sits. But I do not

see how it should be necessary for you to do that. It should be as evident to you as it is to me, I believe, that he was coerced. It was evident to me before I got to Vietnam that the Soviets could do that. I knew what they did to Gary Powers before I got any attention personally myself. And my family—my wife is in here now—she remembers the morning in which our family discussed that issue, and I defended Powers on the basis of what they must have done to him.

I do not see why members of the State Department, particularly the legal advisor, who says that all the Armed Forces guys were there, as if that means they disagree with me, cannot understand that situation; why are you not in a position to anticipate that the Soviets would have intimidated him?

Could you comment on that?

Mr. WOESSNER. Yes, Senator. Let me first respond to your opening remark about our meeting in Bonn. You and your wife were among the most gracious guests we have had in my 6 years there, and if my testimony today has caused you to lower your high esteem for the State Department, I would be eternally unhappy.

Senator DENTON. Not yours; everybody's.

Mr. WOESSNER. But to your specific points, for instance, the laughable comment, as you say, about the Cadillac, and "Everything is better in the Soviet Union"—these were put in the testimony quite deliberately, partly to give some of the flavor of the time spent with this young seaman. To me, they are proof-positive that he had already made up his mind, for whatever reasons—and we can go into that—but for whatever reasons, he had made up his mind he had better go back. And therefore, these kinds of ingratiating remarks are what you would expect.

Senator DENTON. But even Inspector Clousseau would know why he changed his mind, I think.

Mr. WOESSNER. Well, I have tried to address that, and I will come back to it again—the presumption that he really did have an intention to defect.

The question, though, that was posed to all those who participated in this exercise—and you must believe they were honorable people, and it was an agonizing time for all of them—what do you do when you conduct an interview, when you try to build in these safeguards, and when the seaman again and again and again, in every possible way, says, "I want to go home. I want to go back to the Soviet Union. I want to see Mama and Papa again"—whatever—and you say to yourself, this kid has been——

Senator DENTON. All I can suggest, then, is the polygraph.

Mr. WOESSNER [continuing]. This kid has been intimidated. But what would you do, then—forcibly remove him against his will?

Senator DENTON. I would try the polygraph on him, and get the Russians to agree to that.

Mr. WOESSNER. Well, it was not a question of the polygraph, but a question of asking the competent medical authorities whether, in their judgment, he had the ability to understand what he was doing and to make a decision, and he made that decision.

Senator DENTON. I believe that such a decision is impossible on the basis of a medical examination alone, and I think they should know that and that you should know that.

Senator GRASSLEY. At this point, we should continue with the testimony, in the order in which you are listed on the program. Mr. Grimes is next, and then we will go to Admiral Thompson.

Mr. GRIMES. Mr. Chairman, we have no prepared statement at this time. We are here strictly to answer questions as to the role the Customs Service played with regard to support to the State Department and INS, which was substantial at the time.

Senator GRASSLEY. OK. Admiral Thompson.

Admiral THOMPSON. I am in the same position, Senator. I do not have a prepared statement. I would like to make one point, though, that in our role as a supporting agency, Coast Guard personnel: One, did not board the Russian vessel at any time, or two, communicate directly with any personnel on the vessel.

I would also like to clear up a point that Dr. Padoch made. It was not the Coast Guard in any fashion that she spoke to during her interpreting conversations. We were not in that part of the process. I would just like that to be on the record.

Senator GRASSLEY. Fine

I assume that I should ask Mr. Woessner this. Did an interview take place on the Soviet ship? I know that there were interviews on what you refer to as "neutral ground," but were there any interviews on the Soviet ship?

Mr. WOESSNER. Not a formal interview. I believe he was questioned—am I right on that—didn't he say on the Soviet ship the first time he was questioned that he wanted to stay onboard, and did we have any questions—something like that. And we said no, we would reserve our questions for a formal interview. We did not feel we should conduct it onboard the ship.

Senator GRASSLEY. Can you shed any light on a question I asked previously about any marks that would indicate the slashing of wrists?

Mr. WOESSNER. Yes. I have been informed that there were marks on the wrists, but the Soviet captain said at the time to our people that Medvid had cut his wrists himself after he came back to the ship. The U.S. doctors then examined, saw that the wrists had been cut and had been bandaged. They determined that it was not health-threatening, nor did it create a problem for the interview process, and the interview went on. Our doctors did look at the wrists, yes.

Senator GRASSLEY. Was there any judgment made that that is the sort of a cut that would take place during an attempt at suicide?

Mr. WOESSNER. I cannot answer that.

Senator GRASSLEY. I would like to have for the record transcripts of the interviews and the medical reports.

Mr. WOESSNER [conferring with staff]. I am not even sure they are ready yet.

Mr. HERGEN. Senator Grassley, we in the State Department had requested that the medical reports be sent up. To the best of my knowledge——

Senator GRASSLEY. Sent up here?

Mr. HERGEN. Yes, sir. And to the best of my knowledge, we had not received those as of today. On the transcripts of the interviews, again all I know is that all the interviews were not, in fact, tran-

scribed. The final interview, I believe, was. We would have to confirm that with INS. We do have to confirm that with INS. We do not have a transcription at this time.

Senator GRASSLEY. OK. Then my request would be for what transcripts are written and recorded, and the same applies to the medical reports.

Mr. HERGEN. Do I understand, Senator, just for clarification, that those would be for executive session, or submitted publicly? The reason I ask is we have not studied these——

Senator GRASSLEY. If for national security reasons, or other reasons, they cannot be made public, then of course, we will take that into consideration. But we want them.

Mr. HERGEN [continuing]. I understand that. How about the psychiatric and the medical stuff? That is kind of personal stuff. We would not want to put that in the press, necessarily.

Senator GRASSLEY. There again, the laws that apply to like situations will apply in this instance.

Mr. HERGEN. I understand.

Senator GRASSLEY. But I do not know to what extent Mr. Medvid is covered by the Privacy Act.

Mr. HERGEN. He is not.

Senator GRASSLEY. Senator Humphrey, for questioning.

Senator HUMPHREY. Well, first, Mr. Chairman, I have been asked by Senator Denton, who had to leave, to ask the following question of Mr. Woessner.

Mr. Woessner, speaking for Senator Denton, since Friday, I have been trying to obtain copies of the transcript of the State Department interviews with Seaman Medvid. They have not yet been provided to me. Could you explain your reluctance to provide access to these transcripts?

Mr. WOESSNER. I have not seen them myself. I am not even sure that they are finished, but as soon as they are finished, as we just responded to Senator Grassley, we will see about forwarding them to the committee, if that is appropriate.

Senator HUMPHREY. Mr. Chairman, I find it interesting that in this age of the jet airplane, the State Department and other agencies of the executive had no difficulty getting their officials down to Louisiana in a big hurry. It has now been a week since that interview with Seaman Medvid, and there are still no transcripts available to Members of Congress or anyone else with justification to see them. And I would urge the chairman to insist upon the greatest haste in providing those, like not later than tomorrow, so that we can see what actually happened.

Senator GRASSLEY. Is that the last of your questions?

Senator HUMPHREY. No—if I may be permitted——

Senator GRASSLEY. Of course, I am not chairman of the committee but I will pass your urgence along to him and I would join in your request. I do not see any reason why things like this would not be done now and could not be available, with haste.

Senator HUMPHREY [continuing]. I understand you cannot speak on behalf of the chairman. But then, let me make a request on my own behalf of Mr. Woessner.

Mr. Woessner, may I have the transcripts, all that exist, transcripts of all of the conversations from which there are transcripts, including the medical, not later than 3 o'clock tomorrow afternoon?

Mr. WOESSNER. I cannot give you that assurance personally. I will check when I get back and see what the status is and give you——

Senator HUMPHREY. Well, to me, it is inexplicable that 1 week—1 week—in this critical matter—a week—and here we are, racing the clock, and that ship is going to disappear over the horizon—and I suppose some people in the State Department cannot wait—I am not being personal here. But we are racing the clock, and it is a week later, and we do not have the transcripts, and you cannot tell me when we are going to get them.

Do you understand why I feel as I do and why I am upset?

Now, let us talk about the physical condition of Mr. Medvid. The State Department would seem to imply, or perhaps state, that his physical condition was such that he was in the position to be fully responsible to make a fateful choice about the rest of his life.

Let us recall the events. He first jumped from ship and swam about a quarter of a mile in the midst of a tropical storm—perhaps it was still a hurricane at that point—pretty tiring, I would think. Then he was onshore, where he was found by some people, and ultimately, after a period of several hours, he was returned to the riverbank, whereupon he was taken upon a launch and brought back out to the freighter; at some point in the black of the night, jumped once again into the Mississippi River in the midst of a tropical storm, lands ashore again, and was then physically, according to a number of accounts, taken back against his will, kicking and screaming, to the vessel; whereupon, he languished, no doubt in great comfort, for some hours and days. The next we see him, our officials tell us when they had boarded the ship that he appeared to be sedated. No doubt the Soviets had great compassion about his nervous state and gave him a few things just to make him feel better. At some point, we got up the courage to remove him from the ship; took him to a Coast Guard vessel, whereupon he became nauseated; took him then to shore, gave him a nice night's rest, with a Soviet agent just a few feet away from his door there in the living room. He slept from about 1 o'clock, I think you said, until about 8 o'clock—I would be surprised if he slept at all. But after all of those exertions, and all of the stress, and no doubt the intimidation under which he found himself aboard the vessel, I find it hard to believe that you can consider 7 hours of sleep in a room with the Soviet agent just outside of his door, had sufficient rest to make this kind of a decision.

You have admitted now, or verified now, that there was no urinalysis. What about a blood test?

Mr. WOESSNER. There was no blood test.

Senator HUMPHREY. No blood test. Well, I reiterate my point, Mr. Chairman, that the pathologist at the National Institute on Drug Abuse told me you cannot determine without blood and urinalysis tests the presence of drugs.

I suggest that this man was not given an adequate opportunity to rest, was not given a full physical exam such that we can be sure of his competence to make a fateful decision—and what about

these cuts on the wrists? That is very suspicious. We need some medical reports.

Probably, the guy tried to commit suicide—or maybe he was just rubbing his wrists out of anxiety—but probably, he tried to commit suicide. Just let us assume that is the case—it certainly has to be strongly supposed. If indeed he tried to commit suicide, was he just a few hours later in such a condition of sound mind that he could make a responsible decision, especially in view of the fact that he was probably intimidated and threatened with violence to his family aboard the ship?

Don't you think that this business of the cuts on the wrists is strongly supportive of the suspicion of a suicide attempt, Mr. Woessner?

Mr. WOESSNER. The psychiatrist interviewed him for, I believe, 45 minutes; the medical doctor did examine him, and they rendered a medical judgment that he was fit to make a decision in his own right, that he was competent to do so, that he knew where he was and what it was all about.

The rest of your question really is speculation, I cannot really address, though I take your point.

Senator HUMPHREY. All right. Now, if I may address the question of the language I am not, certainly, in my own mind—have we established that this man was conversant and fully comfortable with the Russian language as opposed to the Ukrainian language?

Mr. WOESSNER. I can only tell you what the interpreter that we engaged said, and this was a man I understand we have engaged on many occasions. He said that Medvid was fluent in Russian; spoke Ukrainian, but not flawlessly, that he made mistakes in Ukrainian, and was more comfortable, more at home, speaking Russian. The interpreter himself, as I testified, was of Ukrainian origin and spoke both languages fluently.

I realize that contradicts other testimony you have heard. I can only tell you what I was informed.

Senator HUMPHREY Mr. Woessner—pardon me, I have forgotten who said it—but somebody said, either orally or verbally or in writing, something about perhaps he fell overboard—or I guess he stated, Mr. Medvid ultimately stated——

Mr. WOESSNER. That was the story he told.

Senator HUMPHREY [continuing]. What he fell overboard.

Do you find that credible testimony inasmuch as he had in his possession when he reached the shore a glass jar containing his most important personal papers? Isn't it interesting that while he was out there, working on the hull and accidentally fell overboard, that he just happened to have in a glass jar, waterproof, all of his official papers?

Do you think he fell overboard?

Mr. WOESSNER. As I said, it is virtually impossible to go into his intentions, his motives. Reasonable men may make reasonable assumptions, but they would only be assumptions.

Senator HUMPHREY. Well, how about taking reasonable actions, then?

Mr. WOESSNER. But the problem we were confronted with was not whether or not he had tried to seek asylum on the Thursday or Friday, but the question was on Monday or Tuesday, did he wish

asylum or did he not. And we had to ensure that he had a free choice, as far as was humanly possible.

I understand the import of your comments about his previous condition and what he did, but——

Senator HUMPHREY. In view of his slashed wrists, the observance that he was under sedation, the exhaustion, the emotional stress, the two swims in the midst of a tropical storm, our failure to administer blood and urine tests, do you really now believe that he was in a position, after 6 hours of sleep or 7 hours of sleep—if he slept—with a Soviet official just outside his door, do you really believe he was in a condition to make a sound decision about the rest of his life and perhaps, indeed, about the possibility of facing death were he to go back?

Mr. WOESSNER [continuing]. The doctors told us he was fit to make a decision.

Senator HUMPHREY. And what about your opinion?

Mr. WOESSNER. I was not there. My opinion really does not count.

Senator SIMPSON. I think 10 minutes have expired, Senator Humphrey.

Senator HUMPHREY. Thank you, Mr. Chairman.

Senator SIMPSON. I have a few questions, if I may.

I would like to ask each one of you, and if you could briefly respond, what was the actual extent of your agency or department's involvement in the Medvid incident?

I might ask Admiral Thompson and just go down the line.

Admiral THOMPSON. Mr. Chairman, we were notified, by the Department of State shortly after 4 p.m., Friday the 25th. The situation was described to us as a possible request for political asylum by a seaman off a vessel in New Orleans. We were requested to prevent the Soviet vessel from leaving port until the situation was resolved.

Our district commander in New Orleans then directed various cutters and boats to the scene. From that Friday afternoon up through today, in fact, we have had direct liaison with all the Government agencies involved. We had our own crisis action team at our own Coast Guard Headquarters, and another one at our district, headquarters in New Orleans. We participated in interagency meetings at the Department of State here and in Washington interagency meetings by our personnel with their counterparts in New Orleans.

When the Customs Service informed the Coast Guard that the vessel's clearance to leave port was to be withheld, our captain of the Port of New Orleans issued a written order to the master, stating that the vessel was not to move until the clearance was granted. The captain of the port also established and enforced a security zone around the vessel.

As you have heard, the initial interview with Seaman Medvid following his removal from the Soviet vessel was conducted onboard our Coast Guard Cutter *Salvia*.

We provided the small vessels used to transport Government officials and Seaman Medvid between the ship and shore. But our personnel were not aboard the Russian vessel, nor did we communicate directly with any of the personnel on the vessel. I would char-

acterize our involvement as being in a support role during the entire process.

Senator SIMPSON. Certainly, Mr. Woessner, I will not ask that question of; your testimony is sufficient. But I would ask that of Mr. Grimes.

Mr. GRIMES. Yes, sir. At 4 p.m., on October 25, we received a call from the Border Patrol, outlining and detailing the incident that has been described here. They asked that we use the Customs authority not to release the ship until they could further review and study out the details of the incident.

Using the Customs authority, we then notified the shipping agent that we would not allow the ship to continue to Gramercy, where it was going to take on a load of grain, and also in order to enforce that, I ordered two armed patrol officers to board the Russian vessel. At that time, they did, and we established a watch with the Border Patrol while negotiations were being conducted and the State Department was being notified.

We provided protective service both onshore and on the ship in the form of manpower support for the Border Patrol until such time the Russian seaman was taken off the ship. At that time, we removed the watch and released the hold on the ship to allow it to proceed to Gramercy to take on the load of grain.

At no time did any of our people have any contact or discussions with the seaman, and we were not involved in any of the interviews or any of the negotiations.

Senator SIMPSON. So then, you both are testifying, are you not, that standard operating procedures were used exactly as you would do in any situation?

Mr. GRIMES. Very definitely so in the Customs Service.

Senator SIMPSON. Is that what you are saying, Admiral?

Admiral THOMPSON. Yes, sir, actually, our procedures for potential asylees, were never really put into practice here since we were a support rather than a lead agency.

Senator SIMPSON. Now, we know about the various issues that seem to swirl around this situation. I will ask Mr. Woessner what was, then, the extent of the medical examination of Mr. Medvid when you have testified apparently that there was no urinalysis and no blood test? What was the extent of that?

Mr. WOESSNER. I cannot speak to that. [Conferring with staff.] This is Susan Lysyshyn.

Senator SIMPSON. If you would please identify yourself for the record, if you will.

Ms. LYSYSHYN. I am Susan Lysyshyn, from the Office of Soviet Union Affairs at the State Department.

The medical examinations which took place were the first one, which took place on Saturday afternoon October 26 on the ship when the U.S. Navy doctor first examined Mr. Medvid. He was then examined on the evening of Monday, October 28, after he had been removed from the cutter and was moved to the shore facility. He was examined for 45 minutes by the Navy medical doctor and for an hour by the psychiatrist of the Air Force. He was then examined the following morning, Tuesday, that would be the 29th, for another hour by the Air Force psychiatrist.

I do not have all the details of his examination. The doctors were asked to make the medical determination and to take whatever steps or to carry out whatever procedures they deemed appropriate to draw that conclusion. We, of course, in the State Department are not doctors, and that was a medical judgment to be made by the people on the scene.

That is all I have to add.

Senator SIMPSON. I understand from my good counsel, as I was absent on the floor in debate on an amendment, that my colleagues have asked for a copy of the transcripts and reports, and I certainly emphasize that, too; we would like to have that.

Has there been some request for a time certain on that? Can that be done by 3 o'clock tomorrow? Is that possible?

Mr. WOESSNER. We will see.

Senator HUMPHREY. Mr. Chairman, may I just observe that it has been a week since that interview took place, and I think a transcript is long overdue at this point.

Senator GRASSLEY. What do you mean by "we will see?"

Mr. WOESSNER. I mean we will make an honest effort.

Senator GRASSLEY. Thank you.

Mr. WOESSNER. As I said, I have not seen them myself. Obviously, we will cooperate in any way that is appropriate. We are not holding back.

Senator GRASSLEY. That is very satisfying. Thank you.

Senator SIMPSON. I do appreciate your testimony. As is often and always the case, we will find there are two sides here amidst this spirited discussion, and I notice it will all begin to center back on this one individual, and that will be an interesting thing in the United States: if one who is from a Communist country is treated differently under the asylum procedures of the Refugee Act. I will be fascinated to see where that goes—in foreign policy, in relationships with the Soviet Union, détente or lack thereof. So maybe this electrician, or mechanic—who is not a boy; he is 25 years old—and not exactly illiterate; he speaks three languages, apparently—and not exactly a bumpkin, to my mind—will have an impact on all of this, I do not know. But I am interested in the oversight of the INS and the oversight of the Refugee Act of 1980. I am going to stay right in that and plow right ahead and see where we are, where it works, does not work, and whether the procedures work, or do not work. Are we going to grant asylum to any national of East Germany, Rumania, Poland, Hungary, Czechoslovakia, Bulgaria, Mongolia, Cuba, Albania, the People's Republic of China, North Korea, Vietnam, Laos, or Cambodia? That is where you are headed when you attempt to change that definition. There are 16 million refugees looking for a place to come who have already pulled their feet away from their shores, and somewhere along the line you have to cut through the fog and see where we are really heading with regard to this issue.

I believe Senator Grassley has another question that he wants to propose, and he certainly may do so.

Senator GRASSLEY. I wanted to know if you could describe for me as definitely as you can what the Soviet official who was present said to Medvid.

Mr. WOESSNER. I do not know. I was not present. I have not seen the transcript, and that is something I have not heard from anybody. Again, I do not know whether—Susan, have you——

Ms. LYSYSHYN. No.

Mr. WOESSNER. No. I am sorry. We will have to wait until we can see the transcript.

Senator GRASSLEY. Senator Denton had a question for Commissioner Nelson. I will give that to the chairman to submit to the Commissioner for an answer in writing.

Senator SIMPSON. Yes, and this response is from——

Senator GRASSLEY. No, no. I am sorry. This is Senator Denton's question to Commissioner Nelson.

Senator SIMPSON. All right. It will be submitted, and we will request the Commissioner to respond.

If any other members of the subcommittee has any questions to present, they will do so before the end of the day, if that is possible.

Senator GRASSLEY. And I have three questions that I want to submit in writing for the panel.

Senator SIMPSON. Those questions will be presented, and we will ask for a response.

[Information follows:]

SENATOR GRASSLEY'S QUESTIONS ANSWERED BY THE STATE DEPARTMENT

Q. Who made the decision to return Medvid in the first instance?

A. That question should be referred to INS for response.

Q. Who was involved at the scene during the second phase of Medvid, after he was returned to Soviet ship?

A. A Department of State representative arrived in New Orleans and boarded the M.V. Konev at approximately 10:30 p.m. CST October 25; from then on, the United States had a team of at least six officials aboard the Soviet vessel at all times until Seaman Medvid was transferred to the U.S. Coast Guard Cutter Salvia on October 28. This team included representatives of the Department of State, the Immigration and Naturalization Service (INS), the Treasury Department (Customs Service) and a U.S. Navy doctor. From the evening of October 26 an expert interpreter retained by the Department of State was also on the scene to ensure there would be no difficulty in communicating with Seaman Medvid. Of Ukrainian heritage himself, this interpreter was fluent in both Russian and Ukrainian and was able to communicate with Seaman Medvid in both languages.

The interviews on the Coast Guard Cutter Salvia on October 28 after Seaman Medvid had been removed from the Soviet ship M.V. Konev and at the naval shore facility October 29 were conducted by a State Department representative. Also present were a U.S. Navy medical doctor, an INS official, our interpreter, and four Soviets: two officials from the Soviet Embassy, a Soviet doctor and the Master of the M.V. Konev. We allow the Soviet presence during such interviews in order to ensure our very important rights to similar access to Americans in the Soviet Union. However, the meeting was structured so that at no time were the Soviets present allowed to intimidate Seaman Medvid. Not present during the interview but available nearby to assist if required were two additional Department of State representatives, including an Assistant Legal Adviser, and also a U.S. Air Force psychiatrist, and representatives from INS, the Border Patrol, and the U.S. Customs Service. The interviews were conducted through the U.S. interpreter in both Russian and English.

Q. Please provide transcripts and medical reports.

Copies of the medical and psychiatric reports have already been transmitted to the Chairman of the Subcommittee. INS has furnished the Department of State with partial transcripts of the interviews with Seaman Medvid. We are reviewing these transcripts and will inform the Chairman of the Subcommittee as soon as we have completed our review.

Q. What did the Soviet officials say to Medvid?

A. During the interviews on October 28 and 29, we made clear that Seaman Medvid would have to answer the questions himself. The Soviet representative directed his remarks to the State Department representative.

Q. Was Medvid questioned about wounds on wrists?

A. Yes, but he either declined or was unable to provide an explanation. Seaman Medvid was questioned extensively about why he first jumped from the M.V. Konev and what had happened when he was returned to the ship. He replied that he had

fallen overboard while making some electrical repairs and that he could recall almost nothing from that time until the woke up in the sick bay of the Soviet ship.

Q. Who (at top level) made the decision that the government whould consider case closed and that Medvid's signing of the statement would end it?

The decision was taken at the highest levels of the Department of State, the Department of Justice and the White House.

Senator Denton's Questions For the State Department

Question. On Friday October 25, and Saturday, October 26, it was reported that the State Department "supervised" Medvid aboard the Soviet freighter. Who were these State Department officials and what did they observe? Are their written reports of this supervision available?

Reports that State Department officials "supervised" Seaman Medvid aboard the M.V. Konev on October 25 and 26 are in error. Nor, therefore, would there be any written reports by Department of State officials regarding such activity.

The Department of State representative arrived in New Orleans and boarded the M.V. Konev at approximately 10:30 p.m. CST, October 25; from then on, the United States had a team of at least six officials aboard the Soviet vessel at all times until Seaman Medvid was transferred to the U.S. Coast Guard Cutter Salvia on October 28. This team included representatives of the Department of State, the Immigration and Naturalization Service (INS), the Treasury Department (Customs Service) and a U.S. Navy doctor. From the evening of October 26 an expert interpreter retained by the Department of State was also on the scene to ensure there would be no difficulty in communicating with Seaman Medvid. Of Ukrainian heritage himself, this interpreter was fluent in both Russian and Ukrainian. He was able to communicate with Seaman Medvid in both languages, although Seaman Medvid almost invariably chose to speak in Russian.

Prior to our arrival on the scene, INS officials had observed Seaman Medvid on the M.V. Konev during the afternoon of Friday, October 25, and they reported that he was in bed and appeared to be sedated; there was a bandage on his left wrist and it was reported that Seaman Medvid had inflicted a laceration on his forearm. The Department of State representative first saw Seaman Medvid on Saturday, October 26, at approximately 3:00 p.m. CST. A U.S. Navy doctor conducted a preliminary physical examination and reported that Seaman Medvid was alert and that he appeared to be in generally good condition; he did not appear to be sedated or under the influence of drugs. During that examination Seaman Medvid told the Department of State representative that he wished to return to the USSR and asked whether we had any questions for him. Our representative replied that we would reserve our questions until we could arrange a formal interview off the Soviet vessel.

From the start we made clear to the Soviets that Seaman Medvid had to be removed from the Soviet ship to be interviewed in a non-threatening environment under our control. As a result of these diplomatic discussions it was agreed that Seaman Medvid would be transferred from the M.V. Konev to the U.S. Coast Guard Cutter Salvia for an interview in an environment where he would be free from coercion. The transfer occurred without incident at approximately 4:30 p.m. CST on Monday, October 28.

Question. Who conducted the medical examination of Medvid that occurred on October 29? Is there a written report available?

A U.S. Navy medical doctor conducted a preliminary physical examination of Seaman Medvid at approximately 3:00 p.m. CST on October 26. He was examined briefly on October 28 on board the Coast Guard Cutter Salvia. After Seaman Medvid was transferred to a U.S. Naval facility on shore at approximately 11:15 p.m. EST on October 28, he was given a thorough physical examination by the U.S. Navy medical doctor, which lasted approximately 45 minutes, and a psychological evaluation by a U.S. Air Force psychiatrist which lasted approximately one hour.

Seaman Medvid also participated in another extended interview with a U.S. Air Force psychiatrist the morning of October 29. Copies of these medical reports have already been transmitted to the Chairman of the Subcommittee.

SENATOR DENTON'S QUESTIONS FOR COMMISSIONER NELSON

Question. Commissioner you stated that because certain amendments to the Refugee Act, eliminated the distinction between individuals, fleeing communist countries, and those fleeing non-communist countries, that this case was treated as routine.

I am of the opinion that this distinction should have never been eliminated from the Refugee Act. What would the INS position be on reestablishment of this distinction in the Act?

Answer. I did make reference to the amendments to the Immigration Naturalization Act of 1980, which ended what amounted to a preference of refugee status for persons fleeing Communist and Middle Eastern countries. The Refugee Act expanded the definition of refugee to encompass persons from all nations and not just those fleeing communist countries or countries in the Middle East.

My reference to routine handling dealt with the fact that the Border Patrol agents did not treat this as an immediate action asylum claim; which was mandated by our Operations Instructions 208.8 because it involved a crewman from a Soviet-bloc vessel. This operating instruction requires prompt notification of the INS Central Office and involved consideration of the claim at a higher level. These officers failed even to contact their supervisor about the claim. They treated the whole matter as a routine deserting crewman and returned him summarily to his ship. They did not consider any potential for foreign relations impact, which under our Operations Instructions 103.1(g) also required notification of the regional and central offices of INS.

Relative to whether or not the previous distinction favoring persons fleeing communist countries should be restored to the INA, while deferring the first decision to the Department of Justice the Immigration and Naturalization believes that the present statutory language is serving all meritorious refugee/asylum applicants quite well, regardless of nationality. The return of Mr. Medvid was based on an error by the INS officers, who did not view the sailor's actions as a claim for asylum.

Senator SIMPSON. Well, I thank my colleagues. I thank Senator Humphrey. I know of his deep interest; that is obvious to us all.

In closing, I just would note that while the Immigration Service has procedures which appear reasonable and proper, they obviously failed to follow those procedures in the Medvid case. There is an apparent need for improvement there, in making officers in the field fully familiar with those procedures. I think that was an admission by the Commissioner, and you do not find that happening much in Washington, DC among people who are involved in administering an agency or department of government. I admire that.

It does us no good, obviously, to have effective procedures if they are not completely familiar to those in the service who are likely to come into contact with persons such as Mr. Medvid.

The subcommittee will exercise its oversight function to see that that is done, and maybe they are so complex, and they are in so many volumes that you could not understand them if you did get into them, if you were out in the field. I found that happening in the Three-Mile Island incident, as I ended up dabbling in that de-

lightful thing, too. They have a marvelous array of things in the control room, but they are in 4 volumes, with about 12 indexes, and when the light is red, it is very difficult to know in your wisdom which book to select.

So maybe that is what we need to look at, too. And there are certainly other issues that have been raised about Mr. Medvid, and we will know more about those when we have the medical reports and the transcripts, and I will make that request tomorrow, but at the close of the working day, if you would, we should have that. I agree that it has been a time. The record will remain open for 5 days, if there is any additional material to be considered for the record, and please have the material requested to the subcommittee by November 10.

I believe that—I would defer to Senator Grassley.

Senator GRASSLEY. Mr. Chairman, I would move that the committee hold an executive session to receive the material heretofore requested, and I would like to note for the record that I also have proxies from Senator Denton and Senator Simon in support of that motion. I would make that request at this point.

Senator SIMPSON. I have no problem with going into an executive session, but respectfully, I think our rule says that we must come to a record vote in open session after we have had a confidential session to discuss going into executive session. That may sound weird, but that is what it is.

Senator GRASSLEY. Whatever procedure is appropriate.

Senator SIMPSON. We will do that.

Senator GRASSLEY. And what timing the chairman picks, because I know he is fair in these things and very responsive, I would just ask your consideration, and knowing that it has the support of at least three of us, and I think you said you support it; it may have unanimous support.

Senator SIMPSON. It certainly has mine, and if you would just modify your motion, it will be done in accordance with rule 26, and we will have that.

Senator GRASSLEY. Yes. I so modify.

Senator SIMPSON. Thank you. [Conferring with staff.] If we had a quorum, we could do that session, but we do not have a quorum. We will form that quorum as soon as possible, the three of us, and we will make the decision and come out with the vote and proxies and do that procedure.

I thank you very much. You have been very helpful, and I thank all of you for being present.

That concludes the hearing.

[Whereupon, at 5:33 p. m., the subcommittee was adjourned.]

POLITICAL ASYLUM PROCEDURES FOR ALIEN CREWMEN

THURSDAY, NOVEMBER 7, 1985

U.S. SENATE,
SUBCOMMITTEE ON IMMIGRATION,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:30 a.m., in room SR-418, Russell Senate Office Building, Hon. Alan K. Simpson, chairman of the subcommittee, presiding.

Also present: Senators Grassley and Denton.

Staff present: Richard Day, staff director.

OPENING STATEMENT OF HON. ALAN K. SIMPSON, A U.S. SENATOR FROM THE STATE OF WYOMING

Senator SIMPSON. The subcommittee has a quorum. The procedure under rule 26, if I am not mistaken, is that a motion is made and seconded to go into closed session to determine whether it is necessary to hold an executive session. We go then into an open session to have the vote in public, and then we would go back into executive session with staff present, and at that point I will discuss, I think, the procedure which should not take us long today. We can go further at some later point.

But at this point, is there a motion to go into executive session with proper second.

Senator GRASSLEY. I would move that we go into executive session under the rules of this committee.

Senator DENTON. I would second the motion.

Senator SIMPSON. All in favor signify by saying aye.

[A chorus of ayes.]

Senator SIMPSON. Opposed?

[No response.]

Senator SIMPSON. That is done.

I want to be sure that we have our procedure correct. Let the record show that we went into open session to announce the vote which is by proxy a unanimous vote to go into executive session, and then let the record show we went into executive session with only staff present, all of them cleared for at least the receipt of confidential information.

Senator DENTON. If a staff member is not cleared for confidential in the sense of national security, but this is personal confidential.

Senator SIMPSON. I will leave that with the principals as they read the correspondence from the State Department as to the confidentiality really applying to the medical records.

[Whereupon, the subcommittee went into executive session at 10:40 a.m., November 7, 1985.]

APPENDIX

OPENING STATEMENT OF SENATOR EDWARD M. KENNEDY HEARING ON SEAMAN MIROSLAV MEDVID SENATE IMMIGRATION SUBCOMMITTEE ON REFUGEES NOVEMBER 5, 1985

"Our Government has very crudely denied the right of asylum to a Soviet Seaman. It was a shameful and humiliating and sickening incident -- an incident which rightfully registered shock and dismay among all Americans, and among people throughout the world who look to our country for comfort and hope."

Mr. Chairman, those words are timely today -- but I first spoke them in 1970, after the United States had permitted Lithuanian seaman Simas Kudirka to be forcibly returned to the custody of the Soviet Union. At that time, President Nixon ordered a full investigation of our asylum procedures, and pledged that no such incident would ever occur again.

But last week in New Orleans, it did. The Attorney General has now ordered a full investigation of the circumstances surrounding the return of Ukrainian seaman Miroslav Medvid to his Soviet ship. I hope we shall learn the results of the Attorney General's investigation today. The Administration's position appears to be that whatever mistakes and blunders have been made, Seaman Medvid now wants to return to the Soviet Union -- and that the case is closed.

The Administration may be convinced that the case is closed -- but Congress and the country are far from convinced. And so long as Seaman Medvid and his ship are still within the territorial waters of the United States, the case is obviously not entirely closed.

Fundamental human rights have little value if we honor them in the abstract -- and then fumble away the chance to give them meaning in the lives of individual human beings. In Seaman Medvid's case, there is still time for him to choose freedom, if that is what he wishes, before the Soviet ship weighs anchor and takes him beyond our jurisdiction.

So I welcome the action of the Chairman in expeditiously convening this hearing, so that we can determine why this shocking breakdown in immigration procedures was permitted to occur, and what redress Seaman Medvid -- and the United States Government -- still have if his case is found to be wrongly and prematurely closed.

Finally, let me say that we are also shocked by the sudden turn of events regarding another Soviet defector, Vitaly Yurchenko. We understand and sympathize with Seaman Medvid's bolt for freedom. Mr. Yurchenko's case is more unusual, and the facts are far from clear. What is clear though, is that we do not usually find people bolting through the iron curtain in order to resume life in the Soviet Union.